
Missouri River
Master Water Control Manual
Review and Update

Final
Environmental Impact Statement
Volume III: Appendix A, Tribal Issues, Part 1



U.S. Army Corps
of Engineers
Northwestern Division

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Appendix A

Tribal Information

Part 1



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ACRONYMS

AOP	Annual Operating Plan
ARNRC	American Rivers and Missouri River Natural Resources Committee
BG	Brigadier General
BIA	Bureau of Indian Affairs
BiOp	Biological Opinion
BoR	U.S. Bureau of Reclamation
CEQ	Council on Environmental Quality
COL	Colonel
Corps	U.S. Army Corps of Engineers
CRMP	Cultural Resources Management Plan
CWCP	current Water Control Plan
DoD	U.S. Department of Defense
DRM	Daily Routing Model
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FEIS	Final Environmental Impact Statement
FWS30	USFWS 30-kcfs spring rise
FY	fiscal year
GIS	geographic information system
GP	Gavins Point
kcfs	thousand cubic feet per second
LTC	Lieutenant Commander
MAF	million acre feet
Mainstem Reservoir System	Missouri River Mainstem Reservoir System
Master Manual	Missouri River Master Water Control Manual
MCP	Modified Conservation Plan
MLDDA	Missouri Levee and Drainage District Association
Mni Sose	Mni Sose Intertribal Water Rights Coalition
MODC	Missouri Department of Conservation
MRBA	Missouri River Basin Association
MRRIC	Missouri River Recovery Implementation Committee
MRRIP	Missouri River Recovery Implementation Program
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NWD	Northwestern Division
NWO	Omaha District
PA	Preferred Alternative

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PRDEIS	Preliminary Revised Draft Environmental Impact Statement
RDEIS	Revised Draft Environmental Impact Statement
ROD	Record of Decision
Study	Missouri River Master Water Control Manual Review and Update
THPO	Tribal Historic Preservation Officer
USFWS	U.S. Fish and Wildlife Service
WAPA	Western Area Power Administration

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A-1 INTRODUCTION

Appendix A was prepared in consideration of the U.S. Army Corps of Engineers' (Corps') responsibilities to American Indian Tribes and to enhance coordination and consultation with the Tribes during the Missouri River Master Water Control Manual Review and Update (Study). This appendix is also intended to provide a centralized location for Tribal information. The following sections are included in this appendix: Corps Tribal Policy Principles, Background, American Indian Tribes and the Missouri River Master Water Control Manual (Master Manual) Revision, Cultural Resources, Adaptive Management, Treaties, Trust Responsibilities, Water Rights, Environmental Justice, Tribal Impacts in Chapters 5 and 7 of the Final Environmental Impact Statement (FEIS), Preferred Alternative (PA) Impacts to the Tribes in the FEIS, Consultation History, and Missouri River Master Manual Government-to-Government Consultation. In addition, a compendium of American Indian comments received from basin Tribes throughout this Master Manual process is included in this appendix.

A-2 CORPS TRIBAL POLICY PRINCIPLES

The Corps recognizes the principles of respect for Tribal Governments and the Corps' trust responsibility. In February 1998, the Corps issued Policy Guidance Letter No. 57, Indian Sovereignty and Government-to-Government Relations with Indian Tribes that established the following six Corps Tribal Policy Principles:

- 1) **Tribal Sovereignty** – The Corps recognizes that Tribal Governments are sovereign entities with rights to set their own priorities, develop and manage Tribal and trust resources, and be involved in Federal decisions or activities that have the potential to affect these rights. Tribes retain inherent powers of self-government.
- 2) **Trust Responsibility** – In accordance with provisions of treaties, laws, and Executive Orders, as well as principles lodged in the Constitution of the United States, the Corps will work to the extent practicable, to meet Tribal trust obligations, protect trust resources, and obtain Tribal views of trust and treaty responsibilities or actions related to the Corps.
- 3) **Government-to-Government Relations** – The Corps will ensure that Tribal Chairs/Leaders

meet with Corps Commanders/Leaders and recognize that, as Governments, Tribes have the right to be treated with appropriate respect and dignity in accordance with principles of self-determination.

- 4) **Pre-Decisional and Honest Consultation** – The Corps will reach out, through designated points of contact, to involve Tribes in an open and honest collaborative process designed to ensure information exchange, in consideration of disparate viewpoints before and during decision making, and utilize fair and impartial dispute resolution mechanisms.
- 5) **Self-Reliance, Capacity Building, and Growth** – The Corps will search for ways to involve Tribes in programs, projects, and other activities that build economic capacity and foster abilities to manage Tribal resources while preserving cultural identities.
- 6) **Natural and Cultural Resources** – The Corps will act to fulfill obligations to preserve and protect trust resources, comply with the Native American Graves Protection and Repatriation Act, and ensure reasonable access to sacred sites in accordance with published guidance.

Throughout the Study process the Corps has tried, both substantively and procedurally, to meet the Tribal Policy Principles identified above. We will continue that effort through the conclusion of the Study and National Environmental Policy Act (NEPA) process and into the implementation of the PA. Tribal input was and continues to be an integral part of the NEPA process and the development of the PA.

A-3 BACKGROUND

There are 30 Federally recognized Tribes located within the Missouri River basin. Thirteen Tribal Reservations and/or Tribal Lands are located directly on the Missouri River Mainstem Reservoir System (Mainstem Reservoir System) and the Lower River, while others are dispersed within tributary stream basins.

The Missouri River basin Tribes located in Montana include the Blackfeet Tribe on the Blackfeet Reservation, the Chippewa-Cree Tribe of the Rocky Boys Reservation, the Assiniboine and Gros Ventre Tribes located on the Fort Belknap Reservation, the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Crow Tribe of the Crow Reservation, and the Northern Cheyenne Tribe of the

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Northern Cheyenne Reservation. The Eastern Shoshone and the Northern Arapaho Tribes occupy the Wind River Reservation in Wyoming.

The Fort Berthold Reservation, home of the Three Affiliated Tribes (Mandan, Hidatsa, and Arikara) is segmented by Lake Sakakawea in west central North Dakota. Other Tribes located in North Dakota, but outside the Missouri River drainage basin, include the Turtle Mountain Band of Chippewa and the Spirit Lake Sioux Tribe.

The Standing Rock Sioux Tribe straddles the North Dakota/South Dakota State line along the western shore of Lake Oahe. The middle basin of the Missouri River in South Dakota is also home to the Cheyenne River Sioux Tribe on the western shore of Lake Oahe, the Lower Brule Sioux Tribe on the western shore of Lake Sharpe, the Crow Creek Sioux Tribe on the eastern shore of Lake Sharpe, and the Yankton Sioux Tribe along the eastern shore of Lake Francis Case. The Oglala Sioux Tribe of the Pine

Ridge Reservation and the Rosebud Sioux Tribe of the Rosebud Reservation are located west of the Missouri River. The Sisseton-Wahpeton Sioux and Flandreau Tribes are located to the east of the Missouri River.

The Ponca Tribe of Nebraska and the Santee Sioux Tribe are located along the southern shore of Lewis and Clark Lake. The lower basin Tribes include the Winnebago Tribe and Omaha Tribe, both located along the banks of the Missouri River in southeastern Nebraska and western Iowa. The Iowa Tribal Reservation is located on the western shore of the Missouri River, split evenly in southeastern Nebraska and northeastern Kansas. The Sac and Fox Reservation is located in northeastern Kansas, as are the Reservations of the Kickapoo Tribe and the Prairie Band of Potawatomi. (See Figure A-3-1 for a map of Tribal Reservations in the Missouri River basin.)

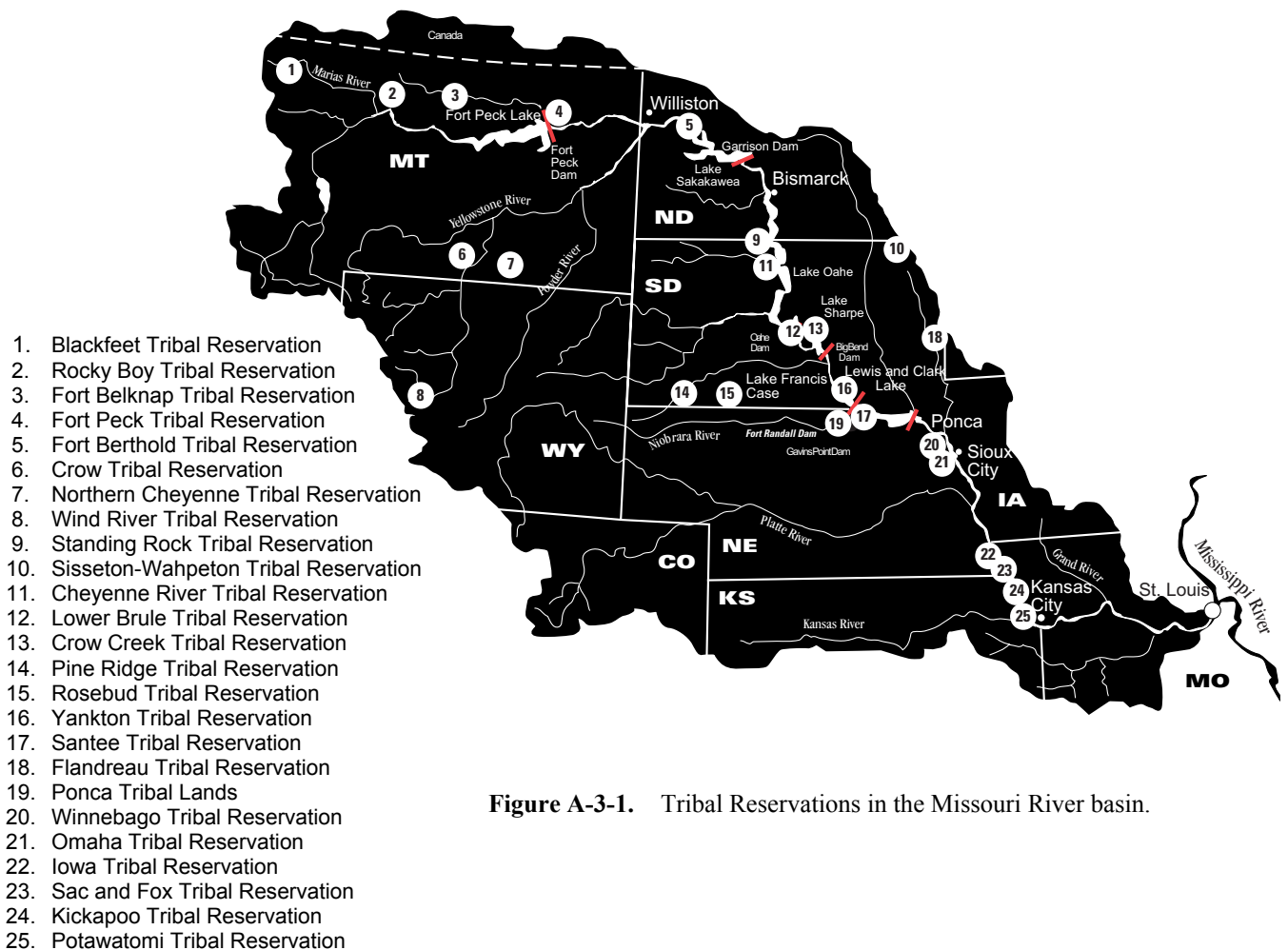


Figure A-3-1. Tribal Reservations in the Missouri River basin.

A-4 AMERICAN INDIAN TRIBES AND THE MASTER MANUAL REVISION

The U. S. Federal Government has a special and unique relationship with Federally recognized Tribes. This relationship is not only defined by law and regulation, but is deeply rooted in the Nation's history. Federally recognized Tribes are dependent sovereign nations and Tribal Governments are sovereign entities with rights to set their own laws, develop and manage Tribal and trust resources, and be involved in Federal decisions or activities that have the potential to affect these rights. Federally recognized Tribes have a legal relationship to the United States through treaties, Acts of Congress, Executive Orders, or other administrative actions that are independent of States. The Tribes, as sovereign Nations, retain inherent powers of self- Government.

The Corps acknowledges that the operation and maintenance of the Missouri River has the potential to significantly affect protected Tribal resources. Therefore, the Corps has a legal and trust responsibility to those potentially affected Tribes. These responsibilities are described in the President's memorandum on Government-to-Government relations with Native American Tribal Governments signed April 29, 1994, U.S. Department of Defense (DoD) American Indian and Alaska Native Policy signed by the Secretary of Defense on October 20, 1998, and the Northwestern Division (NWD) Regulation 5-1-1 on Native American Policy signed August 15, 2001. This Study does not attempt to define any rights that the Tribes are entitled to by law or treaty, but rather is intended to set up the framework for future relations for protection of Tribal trust resources that may be affected by the Corps' operation of the Mainstem Reservoir System.

In the course of the Study, the Corps has attempted to ensure that it has met its legal and trust responsibilities, both procedurally and substantively. In addition to the basin Tribes' involvement in the Study process, the Corps has held numerous informal discussions with the basin Tribes. Following publication of the Preliminary Revised Draft Environmental Impact Statement (PRDEIS) in 1998 and subsequent Tribal workshops, the Corps accelerated its efforts to fulfill its Tribal responsibilities. In February 1999, the Corps offered formal consultation to the 30 basin Tribes. Subsequently, a facilitated Tribal Summit was held in

Rapid City, South Dakota on February 23-24, 1999, to initiate formal consultation. Additionally, following the Preliminary RDEIS the Corps worked with the Mni Sose Intertribal Water Rights Coalition (Mni Sose) to develop a Tribal alternative. That effort culminated in the submission of recommendations by the Mni Sose in March 1999. A second Tribal Summit was held in Bismarck, North Dakota on June 27, 2001. The purpose of this Government-to-Government meeting was to discuss the consultation process on the Study and to schedule workshops on the Revised Draft Environmental Impact Statement (RDEIS).

In September 2001, prior to release of the RDEIS and the Tribal workshops and hearings, a Tribal Orientation Conference was held in Bismarck, North Dakota. The purpose of this conference was to provide the Tribes with a better understanding of the information provided within the RDEIS, with emphasis on impacts to the Tribes. Following release of the RDEIS, a Tribal and public comment period began in October 2001 and concluded February 28, 2002. During this period, workshops and hearings took place throughout the Missouri and Mississippi River basins. Tribes were encouraged to participate in the Study process by attending these workshops and hearings. In addition, the Corps worked in partnership with the Tribes regarding workshop locations, format, and content. Four basin Tribes hosted workshops at Poplar, Montana; New Town, North Dakota; Lower Brule, South Dakota; and Eagle Butte, South Dakota. Tribal hearings were held in Poplar, Montana on October 10, 2001 and February 13, 2002; New Town, North Dakota on October 24, 2001; Lower Brule, South Dakota on October 30, 2002; Fort Yates, North Dakota on January 30, 2002; and Eagle Butte, South Dakota on February 12, 2002.

After the RDEIS comment period concluded, a third Tribal Summit was held in Rapid City, South Dakota on April 16, 2002. This meeting was identified as Government-to-Government consultation. Chairmen and/or delegates from 18 Missouri River basin Tribes participated, as did the NWD Commander. A fourth Tribal Summit was held in Rapid City, South Dakota on October 31, 2003. Eight Missouri River basin Tribes were represented at this Summit. The purpose of this Summit was to discuss Tribal issues prior to identification of a PA in the FEIS.

At the time this FEIS was prepared, nine basin Tribes had accepted the Corps' offer of Government-to-

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Government consultation and initial consultation meetings were held with those Tribes. Participating Tribes include the Standing Rock Sioux Tribe, Rosebud Sioux Tribe, Crow Creek Sioux Tribe, Fort Peck Assiniboine Tribe, Fort Peck Sioux Tribe, Three Affiliated Tribes, Lower Brule Sioux Tribe, Oglala Sioux Tribe, and Omaha Tribe. The Corps continues to solicit input from the Tribes regarding the consultation process (see Section A-12) and to offer consultation to all basin Tribes.

Consultation with the Tribes relative to the Master Manual revision will continue throughout the NEPA process as the Corps meets its Tribal responsibilities.

A-5 CULTURAL RESOURCES

The Corps' awareness of its responsibilities to American Indian Tribes and the protection of cultural resources have evolved considerably during the past decade, and this evolution is reflected in the 14-year Study process. A summary of the current activities regarding our Government-to-Government consultation with the Tribes, and our efforts to identify and protect cultural resources should allay many of the concerns expressed. Basin Tribes have taken the Corps up on its continuing offer of Government-to-Government consultation on the Study. There are several significant issues between the Tribes and the Corps, and some that are directly related to changes in the operation of the Missouri River, and some that are not. The impact of the operation of the Mainstem Reservoir System on cultural resources has been and continues to be paramount in our consultation and discussions with the Tribes.

The analysis of cultural resources in the Study process has been based on the best available information and methodology to address cultural resources issues of this magnitude. More information continues to become available as the Tribes and Corps make progress in jointly addressing cultural resources issues, and this information is incorporated into the NEPA document. Such information and discussion with the Tribes will continue to be integral to the Corps' Cultural Resources Program.

At the time the Study was initiated there were no cultural resources management plans (CRMPs) for the lakes and projects on the Mainstem Reservoir System. Section 110 of the National Historic Preservation Act (NHPA) requires a preservation program for the identification, evaluation, nomination, and protection of historic properties. The Corps is complying with this requirement by

completing a CRMP for all lands owned and managed by the Corps. Separate plans are being prepared for each reservoir along the Missouri River. The Corps, in consultation with the Tribes, has now completed three CRMPs, has two out for consulting party review and one in preliminary draft form. The Lewis and Clark Lake (Gavins Point Dam) CRMP was completed in November 2001, the Lake Sharpe (Big Bend Dam) CRMP was completed in March 2002, and the Lake Francis Case (Fort Randall Dam) CRMP was completed in June 2003. The Lake Oahe (Oahe Dam) and Fort Peck Lake (Fort Peck Dam) CRMPs were distributed in August 2003 for review by consulting parties while the Lake Sakakawea (Garrison Dam) CRMP is currently a preliminary draft document. The Oahe and Fort Peck CRMPs are currently scheduled to be complete in February 2004 while the Lake Sakakawea (Garrison Dam) CRMP is scheduled to be completed in fiscal year (FY) 2004. In the course of developing these plans, the Corps and Tribes have reviewed existing sites and added sites as they have been identified. Tribal Governments are currently under contract to assist the Corps with identification of traditional cultural sites.

The Corps continues to aggressively pursue additional funding for the implementation of the Cultural Resources Program. While funding is still far below what is necessary, the Omaha District has committed \$3 million dollars for inventory, testing, evaluation, assessment, and mitigation in FY 2003 and FY 2004. This is a five-fold increase from previous fiscal years.

The Omaha District Cultural Resources Program for FY 2003 consisted of projects that met the requirements of the NHPA in the areas of inventory, evaluation, and mitigation. Specifically, under inventory and evaluation, work was performed on completing programmatic and other agreement development activities, CRMPs (Lake Francis Case, Oahe, Sakakawea, Fort Peck, and Pipestem), and traditional cultural property surveys (Cheyenne River and Lower Brule). Under mitigation, work efforts concentrated on completing stabilization activities (one project at Lake Francis Case, two near Big Bend Dam, and two on Lake Sakakawea), protection activities (Fort Randall Chapel and digitization of historical photos at Fort Peck), monitoring, and enforcement activities.

Special emphasis has been given to the development of a Section 106 Programmatic Agreement for the operation and management of the Mainstem Reservoir System during this fiscal year. A three-phase process is being used to produce a signed

agreement. Phase I began in June 2002 and ended in February 2003. Phase I included two Cultural Resources Task Force meetings, three Inter-Tribal working group meetings, and multiple presentations and visits to Omaha District Tribal council meetings. All meetings were held to gather early input into the development of the preliminary draft Programmatic Agreement. Phase II is official consultation with interested parties. Formal consultation meetings were held in July 2003, September 2003, and November 2003 to discuss the preliminary draft Programmatic Agreement. It is anticipated that a minimum of three meetings will be needed to complete the draft Programmatic Agreement. Phase III will follow with the public review process, completion of a final Programmatic Agreement, and the signing of the agreement by the consulting parties. The Corps anticipates the Programmatic Agreement will be signed prior to completion of the Master Manual process.

In 2002, an inadvertent discovery was made at the North Point Recreation Area near Lake Francis Case, South Dakota. The Corps was sued by the Yankton Sioux Tribe and eventually a Special Master was appointed by the Court to oversee and advise on restoration of the site. A Plan of Action was completed and implemented in conjunction with the Yankton Sioux Tribe and the State. The site was restored to original conditions during June 2003.

The Omaha District FY 2004 Cultural Resources Program is consistent with the approach that was implemented in FY 2003. It is a balanced approach, with further progress in inventory, evaluation, and mitigation. Information has been and will continue to be shared with stakeholders within the region. Further, special emphasis was given to obtaining Tribal input when deciding the FY 2004 program. The FY 2004 program consists of completion of the final CRMPs; mitigation activities (three stabilization projects, six monitoring projects, and six enforcement projects); and inventory activities (four traditional cultural property surveys, one educational program, one inventory, and one survey). Additional projects are listed to supplement the program, should funds become available. Testing and evaluation activities (11 projects) are given special attention in this supplemental plan. Two inventory, one protection, and three stabilization projects are listed in the supplemental plan. All activities are legal requirements to allow the District to be in compliance with Section 106 of the NHPA.

The analysis of cultural resources in the FEIS for the Study is based on the impacts of wave erosion on

known cultural sites. The Corps does recognize in the FEIS that shoreline and bluff erosion and exposure of cultural sites during low water periods are also factors that impact cultural resources; however, based on available information, a quantitative analysis of these types of impacts could not be developed.

Cultural resources would be affected by any plan the Corps may have selected, including the PA. It is the Corps' desire, however, that any impacts be minimized as much as possible. Therefore, the Corps is committed to expanding its efforts to gain Tribal input into our annual operations and adaptive management strategies directed toward ecosystem recovery. In consultation with the Tribes, the Omaha District geographic information system (GIS) database should assist in determining which sites may be impacted by our annual operations so that decisions regarding protection of those sites can be made by the Tribes and the Corps. Further, the Corps is taking responsible measures to protect resources that may be affected by changes in operation of the Mainstem Reservoir System dams. For example, the Fort Peck Tribes have completed cultural resource surveys below Fort Peck Dam to determine if cultural resources would be affected by specific flow release modifications from Fort Peck for endangered species. If sites would be affected, the Corps and the Tribes would determine what steps are needed to protect the sites.

In summary, the Corps believes that we are in compliance with Sections 110 and 106 of the NHPA and believes that the FEIS fulfills its responsibilities under NHPA. The Corps also recognizes, however, that the protection of cultural resources must be addressed in an adaptive management context with continued participation by basin Tribes.

A-6 ADAPTIVE MANAGEMENT

A required step following the RDEIS was to continue coordination with the USFWS, as required by the ESA, on the endangered species affected by Missouri River operations and, therefore, any changes to the Water Control Plan in the Master Manual. Throughout this continuing coordination, the USFWS has been a proponent for adaptive management.

The Corps also embraces the concept of adaptive management. Adaptive management is not a new concept; but rather, a construct that is now commonly used throughout the world to help shape resource management decisions, policies, and approaches. There is an up-front recognition that all is not known

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about the complete lifecycles and behaviors of the threatened and endangered species or the requisite habitat needs throughout the species' lifecycles. Adaptive management is an overall strategy for dealing with change and scientific uncertainty. It promotes an environment for testing hypotheses and pursuing promising changes, based on sound scientific data and analyses. Adaptive management for the Mainstem Reservoir System, including the operation under a revised Master Manual, will be implemented as the Missouri River Recovery Implementation Program (MRRIP).

MRRIP is a comprehensive and integrated set of actions to be undertaken by the Corps in collaboration with the USFWS, working with the States, Tribes, and other stakeholders in the basin. MRRIP will be undertaken to protect and recover threatened and endangered species listed under the ESA and the ecosystem upon which they depend.

MRRIP will include recovery actions on the Mainstem of the Missouri River from Three Forks, Montana, to St. Louis, Missouri, and on selected tributaries of the Missouri River, including the Kansas River, while taking into consideration other Congressionally authorized and traditional uses of the river. The actions undertaken for MRRIP will be relied on by the Corps, USFWS, and others to avoid the likelihood of 1) jeopardy to the three listed species (piping plover, least tern, and pallid sturgeon) in the Missouri River; 2) adverse modification to designated critical habitat; and 3) violation of the take prohibitions of Section 9 of the ESA.

MRRIP actions will be reviewed, modified, and implemented through coordination with a Missouri River Recovery Implementation Committee (MRRIC), which will include broad and diverse stakeholder representation to ensure that Tribal and public values are incorporated into recovery implementation. MRRIC will provide recommendations to the Federal agencies regarding recovery implementation and will be developed cooperatively with entities having an interest in recovery of listed species and the ecosystem on which they depend. Representation on MRRIC will include the full spectrum of basin interests. Committee membership will be comprised of representatives of Tribal and State Governments and of other Governmental and non-Governmental organizations that have an interest in the management of the river and recovery of the species and ecosystem. Participation by Basin Tribes in the planning and execution of MRRIP is extremely important.

The framework for adaptive management is consistent with all applicable Federal and State laws, American Indian trust responsibilities, and interstate compacts and decrees. The Corps recognizes that the USFWS and the Corps each have statutory responsibilities that cannot be delegated, and the establishment of MRRIC is not intended to abrogate any of their statutory responsibilities. The Corps, however, advocates that MRRIC be a partner in recommending applicable future actions to be taken to benefit the listed species in the Missouri River. Consistent with the adaptive management framework, the Corps will pursue alternative courses of actions based on the scientific findings of Corps efforts and, when applicable, recommendations of MRRIC.

It is anticipated that basin development of MRRIC will require a considerable amount of time. The structure of MRRIC itself will be the subject of adaptive management.

The above discussion is a broad overview of an encompassing and dynamic adaptive management strategy. In reality, adaptive management would occur at several levels ranging from broader ecosystem management activities to day-to-day operations. For example, the ecosystem and species recovery actions will be the focus of the MRRIC. Whereas in the day-to-day operation of the Mainstem Reservoir System, the Corps communicates in real-time with the USFWS, other Federal agencies, Tribes, State and local entities, and numerous stakeholder organizations and individuals, most of the real-time adjustments to Mainstem Reservoir System operations are not expected to be subject to consideration by the MRRIC. These day-to-day interactions will continue and are essential to effective real-time operation of the Mainstem Reservoir System.

A-7 TREATIES

There are treaties with Federally recognized Tribes that address the inherent sovereign status of the Tribes. These treaties, along with statutes, Executive Orders, and agreements, form one recognized basis of Federal obligations to Tribes.

A-8 TRUST RESPONSIBILITIES

Under the Federal trust doctrine, the United States, and individual agencies of the Federal Government, owe a fiduciary duty to Tribes. The nature of that duty depends on the underlying substantive laws (i.e., treaties, statutes, agreements) creating the duty.

Where agency actions may affect Tribal Lands or off-Reservation treaty rights, the trust duty includes a substantive duty to protect these lands and treaty rights “to the fullest extent possible.” Otherwise, unless the law imposes a specific duty on the Federal Government with respect to American Indians, the trust responsibility may be discharged by the agency’s compliance with general statutes and regulations not specifically aimed at protecting Tribes.

A-9 WATER RIGHTS

Tribal water rights are a matter of Federal law. The Winters Doctrine, developed by the Supreme Court in *Winters v. United States*, 207 U.S. 564 (1908), maintains that sufficient water was reserved by implication to fulfill the purposes of the Reservation at the time the Reservation was established. When a Reservation is established with expressed or implicit purposes beyond agriculture, such as fishing and water supply, then water may also be reserved in quantities sufficient to sustain use. The Court elaborated upon the holding of *Winters* in the case of *Arizona v. California*, 373 U.S. 546 (1963). In that case, the Court held that the Tribes need not confine their use of water to agricultural pursuits, regardless of the wording in the document establishing the Reservation, although the amount of water quantified was determined by the amount of water necessary to irrigate the “practicably irrigable acreage” on those Reservations. The Court also stated that water allocated should be sufficient for both present and future needs of the Reservation in order to assure the viability of the Reservations as homelands.

One of the comments the Tribes have had throughout the Study process is that revision of the Master Manual and the allocation of flows to authorized project purposes and endangered species would result in the diminishment of their valuable and reasonable claims to water rights. In May 2001, the Standing Rock Sioux Tribe submitted a Tribal resolution and legal analysis of this issue and rejected the Master Manual revision process (see letter 66 in Section A-13). Case law supports the premise that American Indian reserved water rights cannot be lost, whether or not those rights are exercised.

The Study does not attempt to define, regulate, or quantify water rights or any other rights that the Tribes are entitled to by law or treaty, but rather to set up the framework for future relations for protection of Tribal trust resources.

Missouri River basin Tribes are currently in various stages of quantifying their potential future uses of Mainstem Reservoir System water. Currently, Tribal reserved water rights have not been quantified in a legal forum or by compact except for the Wyoming settlement with the Wind River Reservation and the compacts between Montana and the Tribes of the Fort Peck Reservation (awaiting Congressional approval), Montana and the Tribes of the Fort Belknap Reservation (ratified by the State legislature), Montana and the Crow Tribe (ratified by the State legislature), Montana and the Rocky Boys Reservation (awaiting Congressional approval), and Montana and the Tribes of the Northern Cheyenne Reservation. Other Tribes oppose adjudication or quantification of their water rights because of the Supreme Court’s interpretation of the McCarran Amendment, 43 U.S.C. § 666, stating that Indian reserved water rights may be adjudicated in state courts (*Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 [1983]). The Corps is not directly involved in the process of quantification, but respects a Tribe’s decision to submit to the process or decline to participate in the process. Whether or not a Tribe quantifies, depletions of water from the Mainstem Reservoir System by a Tribal reservation are acknowledged.

Until such time as the Tribes quantify their water rights and consumptively withdraw their water from the Mainstem Reservoir System, the water is in the system. As a responsible public entity, the Corps must operate the Mainstem Reservoir System to reflect the fact that the water is in the system. Future depletions would be analyzed and then incorporated into the Corps’ AOP. A depletion analysis is found in Chapter 7 (7.19) of the FEIS. The analysis reflects the impacts to Missouri River resources resulting from four levels of depletion. For economic resources, Section 7.19 of the FEIS establishes the economic value of Missouri River water. Although the value of the Missouri River to the Tribes is measured in more than economic terms, Section 7.19 of the FEIS does provide some insight into the economic benefits of Missouri River water.

Congress expressed their interest in the treatment of reserved water rights in the Master Manual by convening the U.S. Senate Indian Affairs Committee hearing on October 16, 2003. BG William Grisoli, NWD Commander and Mr. George Dunlop, Acting Deputy Assistant Secretary of the Army for Civil Works testified at this hearing. Others providing testimony include: South Dakota Senator Tom Daschle; Mr. John Yellow Bird Steele, President of the Oglala Sioux Tribe; Chairman of the Tribe Mr.

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Charles W. Murphy. A prepared statement was also submitted by Mr. Michael Jandreau, Chairman of the Lower Brule Sioux Tribe. Copies of their testimony are included in Section A-15 of this Tribal Appendix.

At the fourth Master Manual Tribal Summit on October 31, 2003, Tribal-reserved water rights were discussed in length, given their deep importance to the Tribes. The Corps intends to continue discussions with the Tribes and other Federal agencies on water rights.

A-10 ENVIRONMENTAL JUSTICE

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," provides that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." The Executive Order makes clear that its provisions apply fully to programs involving American Indians.

In the memorandum to heads of departments and agencies that accompanied Executive Order 12898, the President specifically recognized the importance of procedures under NEPA for identifying and addressing environmental justice concerns. The memorandum states "each Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by [NEPA]." The memorandum particularly emphasizes the importance of NEPA's public participation process, directing that "each Federal agency shall provide opportunities for community input in the NEPA process." Agencies are further directed to "identify potential effects and mitigation measures in consultation with affected communities, and improve the accessibility of meetings, crucial documents, and notices."

The Council on Environmental Quality (CEQ) has oversight of the Federal Government's compliance with Executive Order 12898 and NEPA. CEQ, in consultation with the U.S. Environmental Protection Agency (EPA) and other affected agencies, has developed guidance to further assist Federal agencies with their NEPA procedures so that environmental justice concerns are effectively identified and addressed. To the extent practicable and permitted by law, agencies may supplement this guidance with more specific procedures tailored to particular

programs or activities of an individual department, agency, or office. The Corps has attempted to comply with Executive Order 12898 and the CEQ guidance.

Throughout the Study process, the impacts to the Tribes resulting from construction of the Mainstem Reservoir System have been raised by the basin Tribes and are the backdrop for all Tribal discussions and consultation. In light of previous impacts to them, the Tribes have indicated they are gravely concerned about any additional impacts and do not trust the Corps to fulfill its legal and trust responsibilities in a meaningful way. While the scope of the Study is limited to the evaluation of impacts associated with alternative flow management plans for the operation of the Mainstem Reservoir System and assumes a baseline condition of the dams being in place, nonetheless, because of the profound impact to the Tribes resulting from construction of the Mainstem Reservoir System and the perception that some of the Tribal members were not adequately compensated for their losses, these impacts are described below.

Impacts to Tribes resulting from construction of the Mainstem Reservoir System are significant in terms of Tribal Land and resources. A total of 349,566 acres of Tribal Land was acquired for the Pick-Sloan project. This represents just over 23 percent of the 1,499,759 total acres affected. Reservations affected by the Pick-Sloan project are identified as follows:

Reservation	Reservoir	Acres Acquired
Fort Berthold	Garrison	154,912
Standing Rock	Oahe	55,994
Cheyenne River	Oahe	99,548
Lower Brule	Big Bend	14,958
Lower Brule	Fort Randall	7,997
Crow Creek	Big Bend	6,416
Crow Creek	Fort Randall	9,149
Santee	Gavins Point	593
Total Acreage Required		349,566

For those Tribes affected by the Pick-Sloan project, the loss is significant. American Indians rely on the land for subsistence. Food, spirituality, healing, and future economic growth for these communities are some of the principal losses felt by American Indians in these communities today. Unlike the non-native society, who was also affected by these public works projects, Tribal members could not duplicate their old ways of life by moving to a similar environment. Identified Reservations and Tribes affected by the Mainstem Reservoir System are as follows:

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Reservation	Tribes
Wind River, WY	Arapahoe
Fort Belknap, MT	Shoshone
Fort Berthold, ND	Assiniboine
	Gros Ventre
	Mandan
	Hidatsa
Fort Peck, MT	Arikara
	Assiniboine
	Sioux
Blackfeet, MT	Blackfeet
Northern Cheyenne, MT	Cheyenne
Rocky Boys, MT	Chippewa-Cree
Crow, MT	Crow
Omaha, NE	Omaha
Ponca, NE	Ponca
Yankton, South Dakota	Sioux
Cheyenne River, South Dakota	Sioux
Crow Creek, South Dakota	Sioux
Flandreau, South Dakota	Sioux
Lower Brule, South Dakota	Sioux
Pine Ridge, South Dakota	Sioux
Rosebud, South Dakota	Sioux
Santee, NE	Sioux
Sisseton-Wahpeton, South Dakota	Sioux
Standing Rock, ND-South Dakota	Sioux
Winnebago, NE	Winnebago
Iowa, KS-NE	Iowa
Sac and Fox, KS-NE	Sac and Fox
Kickapoo, KS	Kickapoo
Powtawatomi, KS	Prairie Band of Powatawatomi

A-11 TRIBAL IMPACTS IN CHAPTERS 5 AND 7 OF THE FEIS

The alternatives submitted to the Corps for consideration would have varying impacts on different resources for each of the 13 Tribes located on the Mainstem Reservoir System. Impacts to individual Tribes are summarized in Tables A-11-1 through A-11-12. The submitted alternatives propose various modifications to the current Water Control Plan (CWCP) as follows:

- 1) The Missouri Levee and Drainage District Association (MLDDA) alternative sets aside an

- extra 2 million acre feet (MAF) of Mainstem Reservoir System storage for flood control;
- 2) The American Rivers and Missouri River Natural Resources Committee (ARNRC) alternative includes a combination of increased drought conservation measures, periodic spring rise, and annual decreased summer releases;
- 3) The Missouri River Basin Association (MRBA) alternative maintains year-round steady flows similar to the CWCP, but adds increased drought conservation measures and unbalanced intrasystem regulation among the upper three lakes;
- 4) The Missouri Department of Conservation (MODC) alternative has the same features as the MRBA alternative, except that the summer flat release for navigation from Gavins Point Dam is extended to mid-September;
- 5) The USFWS Biological opinion (BIOP) alternative features increased drought conservation measures and spring rises at Gavins Point and Fort Peck Dams, but higher summer flows than the ARNRC alternative; and
- 6) The USFWS 30-kcfs spring rise (FWS30) alternative is identical to the BIOP alternative except that it has a higher spring rise from Gavins Point Dam.

These alternatives are described in greater detail in Chapter 4 of the FEIS. Tribal impacts of these alternatives are addressed for each resource in Chapter 5 of the FEIS and are summarized in Section 5.16.

Impacts to individual Tribes resulting from the alternatives analyzed in detail in the FEIS are summarized in Tables A-11-13 through A-11-24. The first alternative is the Modified Conservation Plan (MCP), which features three basic changes from the CWCP: 1) increased drought conservation measures, 2) unbalanced storage among the three upper and largest lakes in the Mainstem Reservoir System, and 3) an increased springtime release (spring rise) from Fort Peck Dam every third year. The other four alternatives include these features of the MCP, with the addition of modifications to the releases from Gavins Point Dam. These Gavins Point (GP) options represent a range of spring rise and summer low flow measures. For instance, the GP1528 option includes a spring release 15 thousand cubic feet per second (kcfs) higher than that normally required for full service to navigation, followed by a minimum service flat release (modeled as 28.5 kcfs) through summer. The GP2021 option includes a 20-

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kcfs spring rise, followed by a 25-kcfs release for most of the summer, dropping to a low of 21 kcfs from mid-July to mid-August. The GP1521 option includes a 15-kcfs spring rise and a variable (25/21-kcfs) summer low flow, and the GP2028 option includes a 20-kcfs spring rise and a flat (28.5-kcfs) summer low flow. These alternatives are described in greater detail in Chapter 6 of the FEIS. Tribal impacts of these alternatives are addressed for each resource in Chapter 7 of the FEIS, and summarized in Section 7.16.

Changes in storage regimes and river flows may lead to changes in sedimentation and erosion patterns. This in turn could affect storage and channel capacities, shoreline erosion, historic properties, water quality, water supply, recreation access, and flooding potential in affected areas. In addition, summertime flow reductions under the GP options would reduce the amount of excess energy available for resale, leading to possible rate increases for customers of the Western Area Power Administration (WAPA).

The effects of the alternatives on several important economic uses and environmental resources are analyzed and presented in the FEIS. It is difficult to generalize about effects to the Tribes in the basin. Each Tribe has a unique set of values and concerns; also, the effects of the different alternatives on a particular Tribe are influenced by its location within the basin. For this reason, effects of the alternatives are presented separately for each Tribe in each of the

resource sections of the FEIS, and summarized for each Tribe in Chapter 5, Section 5.16 (for submitted alternatives) and Chapter 7, Section 7.16 (for alternatives selected for detailed analysis).

It is possible to make some general observations about the effects of the alternatives on the Tribes. For all affected Tribes along the Mainstem Reservoir System, the MCP and GP options all have greater adverse impacts than the CWCP to historic properties and flood control, but have positive effects on water supply. The results are mixed for recreation benefits, with Tribes along the lakes experiencing increased benefits and most Tribes along the river experiencing decreases. Overall, the MCP has the smallest increase in impacts to historic properties throughout the basin, compared to the CWCP.

Figure A-11-1 presents the impacts of the GP options to representative WAPA firm power customers who rely on WAPA for varying percentages of their firm power supply. Generally, WAPA determined that the greater the dependence on hydropower for energy, the greater the impact on the purchase power cost to each customer. Representative Tribal customers generally rely on WAPA for approximately 60 percent of their firm power. These customers would have increased costs of 2 to 3 percent under GP1528, impacts of about 3 percent under GP2028, and impacts between 9 and 10 percent under GP1521 and GP2021. A more detailed discussion of impacts to WAPA firm power customers is provided in Chapter 7 of the FEIS.

Table A-11-1. Fort Peck Reservation impacts summary for submitted alternatives.

	Percent Change from CWCP					
	MLDDA	ARNRC	MRBA	MODC	BIOP	FWS30
Wetland Habitat	-6	1	6	0	-14	-12
Riparian Habitat	0	0	0	0	0	0
Tern and Plover Habitat	12	-56	38	-5	-45	-54
Reservoir Young Fish Production	--	--	--	--	--	--
Reservoir Coldwater Fish Habitat	--	--	--	--	--	--
River Coldwater Fish Habitat	1	9	1	3	10	9
River Warmwater Fish Habitat	-1	-19	-11	-8	-17	-13
Native River Fish Physical Habitat	0	5	1	1	2	2
Flood Control	-1	0	0	0	-2	-2
Water Supply	0	10	0	5	14	14
Hydropower	--	--	--	--	--	--
Recreation	0	8	1	2	10	9
Navigation	--	--	--	--	--	--
Historic Properties	--	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

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Table A-11-2. Fort Berthold Reservation impacts summary for submitted alternatives.

	Percent Change from CWCP					
	MLDDA	ARNRC	MRBA	MODC	BIOP	FWS30
Wetland Habitat	--	--	--	--	--	--
Riparian Habitat	--	--	--	--	--	--
Tern and Plover Habitat	--	--	--	--	--	--
Reservoir Young Fish Production	4	7	-1	5	11	11
Reservoir Coldwater Fish Habitat	-2	12	-2	6	3	4
River Coldwater Fish Habitat	--	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--	--
Native River Fish Physical Habitat	--	--	--	--	--	--
Flood Control	33	-100	-33	-67	-67	-67
Water Supply	-1	12	6	7	1	7
Hydropower	--	--	--	--	--	--
Recreation	-2	14	14	11	10	15
Navigation	--	--	--	--	--	--
Historic Properties	4	-11	-4	-4	-6	-6

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

Table A-11-3. Standing Rock Reservation impacts summary for submitted alternatives.

	Percent Change from CWCP					
	MLDDA	ARNRC	MRBA	MODC	BIOP	FWS30
Wetland Habitat	80	21	-7	-35	-45	-22
Riparian Habitat	3	-38	3	1	-21	1
Tern and Plover Habitat	--	--	--	--	--	--
Reservoir Young Fish Production	5	-2	2	7	-1	1
Reservoir Coldwater Fish Habitat	-3	14	5	6	12	12
River Coldwater Fish Habitat	--	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--	--
Native River Fish Physical Habitat	--	--	--	--	--	--
Flood Control	40	-80	0	-20	-60	-60
Water Supply	-6	18	9	10	12	10
Hydropower	--	--	--	--	--	--
Recreation	2	10	7	7	5	10
Navigation	--	--	--	--	--	--
Historic Properties	2	-5	-2	-2	-4	-4

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

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Table A-11-4. Cheyenne River Reservation impacts summary for submitted alternatives.

	Percent Change from CWCP					
	MLDDA	ARNRC	MRBA	MODC	BIOP	FWS30
Wetland Habitat	42	-3	-26	-9	-28	-26
Riparian Habitat	122	-39	0	-11	-39	-28
Tern and Plover Habitat	--	--	--	--	--	--
Reservoir Young Fish Production	5	-2	2	7	-1	1
Reservoir Coldwater Fish Habitat	-3	14	5	6	12	12
River Coldwater Fish Habitat	--	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--	--
Native River Fish Physical Habitat	--	--	--	--	--	--
Flood Control	40	-100	-20	-40	-80	-80
Water Supply	13	13	13	0	0	13
Hydropower	--	--	--	--	--	--
Recreation	0	0	0	0	0	1
Navigation	--	--	--	--	--	--
Historic Properties	2	-5	-2	-2	-4	-4

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

Table A-11-5. Lower Brule Reservation impacts summary for submitted alternatives.

	Percent Change from CWCP					
	MLDDA	ARNRC	MRBA	MODC	BIOP	FWS30
Wetland Habitat	--	--	--	--	--	--
Riparian Habitat	--	--	--	--	--	--
Tern and Plover Habitat	--	--	--	--	--	--
Reservoir Young Fish Production	2	-23	-4	-2	-6	-9
Reservoir Coldwater Fish Habitat	--	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--	--
Native River Fish Physical Habitat	--	--	--	--	--	--
Flood Control	0	0	0	0	0	0
Water Supply	0	0	0	0	0	0
Hydropower	--	--	--	--	--	--
Recreation	0	0	0	0	0	0
Navigation	--	--	--	--	--	--
Historic Properties	0	0	0	0	0	0

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

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Table A-11-6. Crow Creek Reservation impacts summary for submitted alternatives.

	Percent Change from CWCP					
	MLDDA	ARNRC	MRBA	MODC	BIOP	FWS30
Wetland Habitat	--	--	--	--	--	--
Riparian Habitat	--	--	--	--	--	--
Tern and Plover Habitat	--	--	--	--	--	--
Reservoir Young Fish Production	2	-23	-4	-2	-6	-9
Reservoir Coldwater Fish Habitat	--	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--	--
Native River Fish Physical Habitat	--	--	--	--	--	--
Flood Control	100	0	0	0	0	0
Water Supply	0	1	1	1	1	1
Hydropower	--	--	--	--	--	--
Recreation	0	0	0	0	0	0
Navigation	--	--	--	--	--	--
Historic Properties	0	0	0	0	0	0

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

Table A-11-7. Yankton Reservation impacts summary for submitted alternatives.

	Percent Change from CWCP					
	MLDDA	ARNRC	MRBA	MODC	BIOP	FWS30
Wetland Habitat	3	4	1	-1	5	6
Riparian Habitat	2	0	-2	0	-4	-8
Tern and Plover Habitat	17	127	19	3	99	111
Reservoir Young Fish Production	-5	34	-1	5	29	30
Reservoir Coldwater Fish Habitat	--	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--	--
River Warmwater Fish Habitat	-5	-15	-9	-6	-22	-23
Native River Fish Physical Habitat	0	-1	-1	0	-1	-1
Flood Control	0	0	0	0	0	0
Water Supply	0	0	0	0	0	1
Hydropower	--	--	--	--	--	--
Recreation	0	-5	-1	-1	-2	-3
Navigation	--	--	--	--	--	--
Historic Properties	--	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

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Table A-11-8. Ponca Tribal Lands impacts summary for submitted alternatives.

	Percent Change from CWCP					
	MLDDA	ARNRC	MRBA	MODC	BIOP	FWS30
Wetland Habitat	2	-6	-1	-1	-6	-7
Riparian Habitat	0	8	-5	-3	5	6
Tern and Plover Habitat	17	127	19	3	99	111
Reservoir Young Fish Production	--	--	--	--	--	--
Reservoir Coldwater Fish Habitat	--	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--	--
River Warmwater Fish Habitat	-5	-15	-9	-6	-22	-23
Native River Fish Physical Habitat	0	-1	-1	0	-1	-1
Flood Control	0	0	0	0	0	0
Water Supply	--	--	--	--	--	--
Hydropower	--	--	--	--	--	--
Recreation	0	-5	-1	-1	-2	-3
Navigation	--	--	--	--	--	--
Historic Properties	--	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

Table A-11-9. Santee Reservation impacts summary for submitted alternatives.

	Percent Change from CWCP					
	MLDDA	ARNRC	MRBA	MODC	BIOP	FWS30
Wetland Habitat	2	-6	-1	-1	-6	-7
Riparian Habitat	0	8	-5	-3	5	6
Tern and Plover Habitat	17	127	19	3	99	111
Reservoir Young Fish Production	-2	28	13	33	26	28
Reservoir Coldwater Fish Habitat	--	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--	--
Native River Fish Physical Habitat	--	--	--	--	--	--
Flood Control	0	0	0	0	0	1
Water Supply	0	0	0	0	0	0
Hydropower	--	--	--	--	--	--
Recreation	0	0	0	0	0	0
Navigation	--	--	--	--	--	--
Historic Properties	--	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

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Table A-11-10. Winnebago Reservation impacts summary for submitted alternatives.

	Percent Change from CWCP					
	MLDDA	ARNRC	MRBA	MODC	BIOP	FWS30
Wetland Habitat	-2	-6	3	5	-1	3
Riparian Habitat	-1	-6	-1	-2	-4	-12
Tern and Plover Habitat	--	--	--	--	--	--
Reservoir Young Fish Production	--	--	--	--	--	--
Reservoir Coldwater Fish Habitat	--	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--	--
Native River Fish Physical Habitat	0	0	0	0	-1	0
Flood Control	0	-1	0	0	0	0
Water Supply	0	0	0	0	0	0
Hydropower	--	--	--	--	--	--
Recreation	-1	-8	-1	-1	-5	-6
Navigation	--	--	--	--	--	--
Historic Properties	--	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

Table A-11-11. Omaha Reservation impacts summary for submitted alternatives.

	Percent Change from CWCP					
	MLDDA	ARNRC	MRBA	MODC	BIOP	FWS30
Wetland Habitat	-2	-6	3	5	-1	3
Riparian Habitat	-1	-6	-1	-2	-4	-12
Tern and Plover Habitat	--	--	--	--	--	--
Reservoir Young Fish Production	--	--	--	--	--	--
Reservoir Coldwater Fish Habitat	--	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--	--
Native River Fish Physical Habitat	0	0	0	0	-1	0
Flood Control	0	-1	-1	0	0	-1
Water Supply	0	0	0	0	0	0
Hydropower	--	--	--	--	--	--
Recreation	-1	-8	-1	-1	-5	-6
Navigation	--	--	--	--	--	--
Historic Properties	--	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

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Table A-11-12. Iowa and Sac and Fox Reservations impacts summary for submitted alternatives.

	Percent Change from CWCP					
	MLDDA	ARNRC	MRBA	MODC	BIOP	FWS30
Wetland Habitat	-1	16	2	4	4	9
Riparian Habitat	0	-6	-1	-1	-2	-7
Tern and Plover Habitat	--	--	--	--	--	--
Reservoir Young Fish Production	--	--	--	--	--	--
Reservoir Coldwater Fish Habitat	--	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--	--
Native River Fish Physical Habitat	0	5	1	1	3	4
Flood Control	0	0	0	0	0	1
Water Supply	--	--	--	--	--	--
Hydropower	--	--	--	--	--	--
Recreation	0	-2	0	0	-2	-2
Navigation	--	--	--	--	--	--
Historic Properties	--	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

Table A-11-13. Fort Peck Reservation impacts summary for alternatives evaluated in detail.

	Percent Change From CWCP				
	MCP	GP1528	GP2021	GP1521	GP2028
Wetland Habitat	3	-14	-14	-8	-7
Riparian Habitat	0	0	0	0	0
Riverine Tern and Plover Habitat	61	-43	-30	-28	-46
Reservoir Tern and Plover Habitat	--	--	--	--	--
Reservoir Young Fish Production	--	--	--	--	--
Reservoir Coldwater Fish Habitat	--	--	--	--	--
River Coldwater Fish Habitat	1	8	8	8	9
River Warmwater Fish Habitat	-8	-17	-17	-17	-19
Native River Fish Physical Habitat	1	2	2	2	2
Flood Control	0	-2	-2	-2	-2
Water Supply	0	14	14	14	14
Hydropower	--	--	--	--	--
Recreation	0	8	9	8	8
Navigation	--	--	--	--	--
Historic Properties	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

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Table A-11-14. Fort Berthold Reservation impacts summary for alternatives evaluated in detail.

	Percent Change From CWCP				
	MCP	GP1528	GP2021	GP1521	GP2028
Wetland Habitat	--	--	--	--	--
Riparian Habitat	--	--	--	--	--
Riverine Tern and Plover Habitat	--	--	--	--	--
Reservoir Tern and Plover Habitat	1	28	29	24	25
Reservoir Young Fish Production	0	13	15	15	15
Reservoir Coldwater Fish Habitat	-2	10	10	9	10
River Coldwater Fish Habitat	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--
Native River Fish Physical Habitat	--	--	--	--	--
Flood Control	-33	-67	-67	-67	-67
Water Supply	6	9	1	1	9
Hydropower	--	--	--	--	--
Recreation	14	12	9	9	14
Navigation	--	--	--	--	--
Historic Properties	-4	-8	-8	-8	-9

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

Table A-11-15. Standing Rock Reservation impacts summary for alternatives evaluated in detail.

	Percent Change From CWCP				
	MCP	GP1528	GP2021	GP1521	GP2028
Wetland Habitat	-10	-62	2	-40	-59
Riparian Habitat	2	5	-9	-14	1
Riverine Tern and Plover Habitat	--	--	--	--	--
Reservoir Tern and Plover Habitat	9	5	16	11	10
Reservoir Young Fish Production	2	-3	0	2	2
Reservoir Coldwater Fish Habitat	6	8	10	10	7
River Coldwater Fish Habitat	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--
Native River Fish Physical Habitat	--	--	--	--	--
Flood Control	-20	-20	-40	-40	-20
Water Supply	9	10	10	10	10
Hydropower	--	--	--	--	--
Recreation	7	12	7	7	12
Navigation	--	--	--	--	--
Historic Properties	-2	-5	-4	-4	-4

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

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Table A-11-16. Cheyenne River Reservation impacts summary for alternatives evaluated in detail.

	Percent Change From CWCP				
	MCP	GP1528	GP2021	GP1521	GP2028
Wetland Habitat	-19	-9	-14	7	-7
Riparian Habitat	-11	-33	-22	-28	-28
Riverine Tern and Plover Habitat	--	--	--	--	--
Reservoir Tern and Plover Habitat	9	5	16	11	10
Reservoir Young Fish Production	2	-3	0	2	2
Reservoir Coldwater Fish Habitat	6	8	10	10	7
River Coldwater Fish Habitat	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--
Native River Fish Physical Habitat	--	--	--	--	--
Flood Control	-20	-40	-40	-60	-40
Water Supply	13	0	0	0	0
Hydropower	--	--	--	--	--
Recreation	0	0	0	0	0
Navigation	--	--	--	--	--
Historic Properties	-2	-5	-4	-4	-4

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

Table A-11-17. Lower Brule Reservation impacts summary for alternatives evaluated in detail.

	Percent Change From CWCP				
	MCP	GP1528	GP2021	GP1521	GP2028
Wetland Habitat	--	--	--	--	--
Riparian Habitat	--	--	--	--	--
Riverine Tern and Plover Habitat	--	--	--	--	--
Reservoir Tern and Plover Habitat	--	--	--	--	--
Reservoir Young Fish Production	-2	12	12	12	9
Reservoir Coldwater Fish Habitat	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--
Native River Fish Physical Habitat	--	--	--	--	--
Flood Control	0	0	0	0	0
Water Supply	0	0	0	0	0
Hydropower	--	--	--	--	--
Recreation	0	0	0	0	0
Navigation	--	--	--	--	--
Historic Properties	0	0	0	0	0

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

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Table A-11-18. Crow Creek Reservation impacts summary for alternatives evaluated in detail.

	Percent Change From CWCP				
	MCP	GP1528	GP2021	GP1521	GP2028
Wetland Habitat	--	--	--	--	--
Riparian Habitat	--	--	--	--	--
Riverine Tern and Plover Habitat	--	--	--	--	--
Reservoir Tern and Plover Habitat	--	--	--	--	--
Reservoir Young Fish Production	-2	12	12	12	9
Reservoir Coldwater Fish Habitat	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--
Native River Fish Physical Habitat	--	--	--	--	--
Flood Control	0	0	0	0	0
Water Supply	1	1	1	1	1
Hydropower	--	--	--	--	--
Recreation	0	0	0	0	0
Navigation	--	--	--	--	--
Historic Properties	0	0	0	0	0

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

Table A-11-19. Yankton Reservation impacts summary for alternatives evaluated in detail.

	Percent Change From CWCP				
	MCP	GP1528	GP2021	GP1521	GP2028
Wetland Habitat	1	5	5	3	6
Riparian Habitat	-2	-4	-4	-1	-5
Riverine Tern and Plover Habitat	18	60	98	103	63
Reservoir Tern and Plover Habitat	--	--	--	--	--
Reservoir Young Fish Production	0	28	32	23	22
Reservoir Coldwater Fish Habitat	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--
River Warmwater Fish Habitat	-9	-16	-22	-22	-17
Native River Fish Physical Habitat	-1	0	-1	-1	0
Flood Control	0	0	0	0	0
Water Supply	0	0	0	0	0
Hydropower	--	--	--	--	--
Recreation	-1	-1	-2	-2	-2
Navigation	--	--	--	--	--
Historic Properties	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

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Table A-11-20. Ponca Tribal Lands impacts summary for alternatives evaluated in detail.

	Percent Change From CWCP				
	MCP	GP1528	GP2021	GP1521	GP2028
Wetland Habitat	-1	0	-6	-6	0
Riparian Habitat	-5	-2	5	5	-2
Riverine Tern and Plover Habitat	18	60	98	103	63
Reservoir Tern and Plover Habitat	--	--	--	--	--
Reservoir Young Fish Production	--	--	--	--	--
Reservoir Coldwater Fish Habitat	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--
River Warmwater Fish Habitat	-9	-16	-22	-22	-17
Native River Fish Physical Habitat	-1	0	-1	-1	0
Flood Control	0	0	0	0	0
Water Supply	--	--	--	--	--
Hydropower	--	--	--	--	--
Recreation	-1	-1	-2	-2	-2
Navigation	--	--	--	--	--
Historic Properties	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.
 Black shading denotes an adverse impact when compared to the CWCP.
 -- denotes not available or not applicable.

Table A-11-21. Santee Reservation impacts summary for alternatives evaluated in detail.

	Percent Change From CWCP				
	MCP	GP1528	GP2021	GP1521	GP2028
Wetland Habitat	-1	0	-6	-6	0
Riparian Habitat	-5	-2	5	5	-2
Riverine Tern and Plover Habitat	18	60	98	103	63
Reservoir Tern and Plover Habitat	--	--	--	--	--
Reservoir Young Fish Production	13	25	25	19	19
Reservoir Coldwater Fish Habitat	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--
Native River Fish Physical Habitat	--	--	--	--	--
Flood Control	0	0	0	0	0
Water Supply	0	0	0	0	0
Hydropower	--	--	--	--	--
Recreation	0	0	0	0	0
Navigation	--	--	--	--	--
Historic Properties	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.
 Black shading denotes an adverse impact when compared to the CWCP.
 -- denotes not available or not applicable.

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Table A-11-22. Winnebago Reservation impacts summary for alternatives evaluated in detail.

	Percent Change From CWCP				
	MCP	GP1528	GP2021	GP1521	GP2028
Wetland Habitat	3	-2	-3	0	-2
Riparian Habitat	0	-2	-7	-3	-6
Riverine Tern and Plover Habitat	--	--	--	--	--
Reservoir Tern and Plover Habitat	--	--	--	--	--
Reservoir Young Fish Production	--	--	--	--	--
Reservoir Coldwater Fish Habitat	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--
Native River Fish Physical Habitat	0	0	-1	-1	0
Flood Control	0	-1	0	-1	-1
Water Supply	0	0	0	0	0
Hydropower	--	--	--	--	--
Recreation	-1	-2	-5	-4	-2
Navigation	--	--	--	--	--
Historic Properties	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

Table A-11-23. Omaha Reservation impacts summary for alternatives evaluated in detail.

	Percent Change From CWCP				
	MCP	GP1528	GP2021	GP1521	GP2028
Wetland Habitat	3	-2	-3	0	-2
Riparian Habitat	0	-2	-7	-3	-6
Riverine Tern and Plover Habitat	--	--	--	--	--
Reservoir Tern and Plover Habitat	--	--	--	--	--
Reservoir Young Fish Production	--	--	--	--	--
Reservoir Coldwater Fish Habitat	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--
Native River Fish Physical Habitat	0	0	-1	-1	0
Flood Control	0	-1	0	-1	-1
Water Supply	0	0	0	0	0
Hydropower	--	--	--	--	--
Recreation	-1	-2	-5	-4	-2
Navigation	--	--	--	--	--
Historic Properties	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

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Table A-11-24. Iowa and Sac and Fox Reservations impacts summary for alternatives evaluated in detail.

	Percent Change From CWCP				
	MCP	GP1528	GP2021	GP1521	GP2028
Wetland Habitat	2	7	4	6	7
Riparian Habitat	-1	-4	-3	-3	-4
Riverine Tern and Plover Habitat	--	--	--	--	--
Reservoir Tern and Plover Habitat	--	--	--	--	--
Reservoir Young Fish Production	--	--	--	--	--
Reservoir Coldwater Fish Habitat	--	--	--	--	--
River Coldwater Fish Habitat	--	--	--	--	--
River Warmwater Fish Habitat	--	--	--	--	--
Native River Fish Physical Habitat	1	3	3	3	3
Flood Control	0	0	0	0	0
Water Supply	--	--	--	--	--
Hydropower	--	--	--	--	--
Recreation	0	-1	-2	-2	-1
Navigation	--	--	--	--	--
Historic Properties	--	--	--	--	--

Light gray shading denotes a beneficial impact when compared to the CWCP.

Black shading denotes an adverse impact when compared to the CWCP.

-- denotes not available or not applicable.

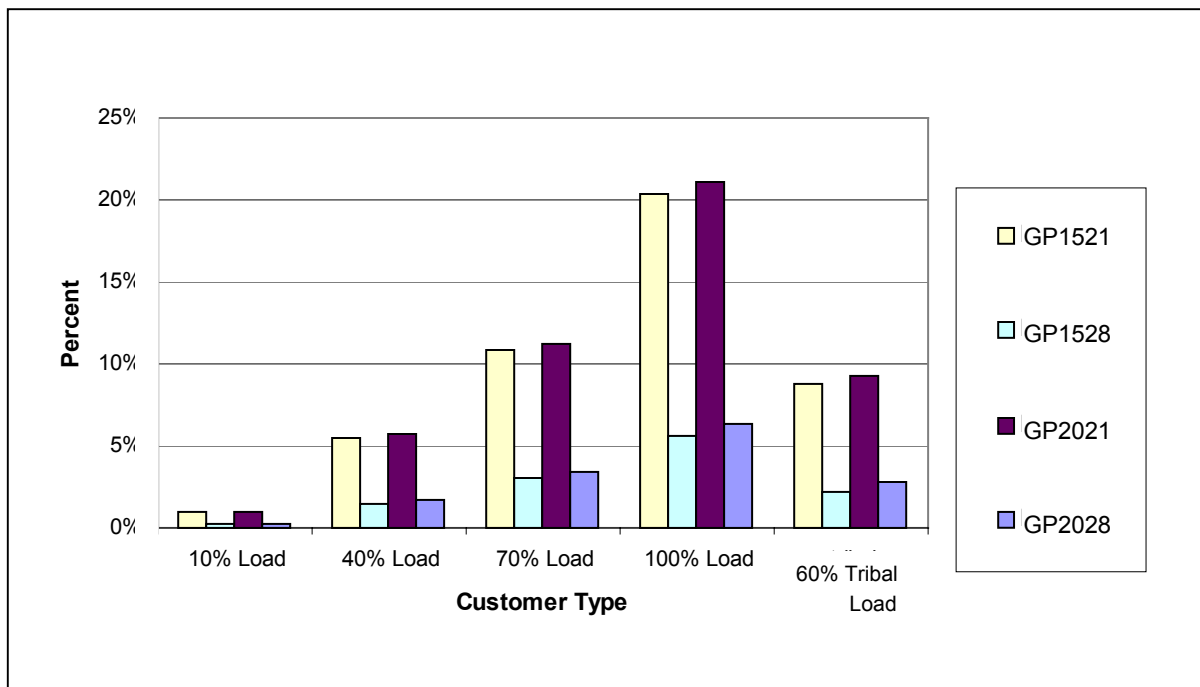


Figure A-11-1. Increase in purchase power costs under the GP options.

A-12 PA IMPACTS TO THE TRIBES IN THE FEIS

The PA presented in this FEIS represents the Corps' conclusions regarding how the Missouri River Mainstem Reservoir System should be operated to best serve the overall public interest while complying with all applicable laws and regulations. The PA reflects the need for changes in the operation of the Mainstem Reservoir System. The Corps believes that the PA presented and evaluated in this FEIS best balances and serves all Congressionally authorized project purposes, while complying with the Corps' obligations under all other applicable statutory and regulatory requirements, including the ESA, and fully satisfying the Corps' responsibilities to Federally recognized Tribes. This PA was developed taking into account all reasonably foreseeable impacts to upstream and downstream key resources. The Corps believes the PA represents a balanced approach to operation of the Mainstem Reservoir System, best achieves the multiple purposes and benefits for which the mainstem reservoirs were authorized and constructed, and represents the best approach for satisfying the Corps' obligations under all other statutory and regulatory requirements.

The PA, which is described in detail in Chapter 8 of the FEIS, has three basic flow features that are changed from the CWCP. First, more stringent drought conservation measures, which retain more water in the upper three reservoirs, are included. Second, a set pattern of intrasystem unbalancing is included. Third, the summer (May through August) non-navigation service level is increased. All three features are included in the PA; however, the Water Control Plan revisions made at this time will be re-evaluated for inclusion of other features in 3 years. The first two features were changed to address some of the major concerns expressed by upper basin interests as the 1987 to 1993 drought occurred.

The PA has more stringent drought conservation measures than the CWCP. Conservation during droughts under the PA would be similar to that provided by the MCP outlined in detail in the RDEIS. Many basin stakeholders raised specific concerns regarding how this level of conservation was attained, and the Corps did some refinement of the conservation measures to address the concerns. As under the MCP, navigation service during extended droughts would be reduced earlier under the PA than it is under the CWCP. This would allow more water to be stored in the upper three

reservoirs. During severe droughts, such as the 1930 to 1941 drought, releases for navigation would be curtailed at a higher total Mainstem Reservoir System storage level than under the CWCP.

The drought conservation criteria included in the proposed action consists of "guide curves" for the determination of flow support for navigation and other downstream purposes and navigation season length. Under the PA, the navigation service level and season length would be reduced at higher Mainstem Reservoir System storage levels than they are currently under the CWCP. The March 15 storage level at which navigation would not be served for that year was raised from 23.5 million acre-feet (MAF) under the CWCP to 31 MAF under the new drought conservation measures for this proposed action measure.

The PA calls for suspension of navigation service if Mainstem Reservoir System water-in-storage (storage) is at or below 31 MAF on March 15 of any year. It should be noted that the occurrence of Mainstem Reservoir System storage at or below 31 MAF would most likely coincide with a national drought emergency. If any of the reservoir regulation studies performed for the development of the AOP indicate that storage will be at or below 31 MAF by the upcoming March 15, the Corps will notify the Secretary of the Army. Approval from the Secretary of the Army will be required prior to implementation of back-to-back non-navigation years. The Corps will ensure that basin stakeholders are promptly informed of the notification to the Secretary of the Army and of the Secretary's decision regarding suspension of navigation.

The Corps has the authority under the existing Master Manual and currently implements intrasystem unbalancing under the CWCP. Under the CWCP, when Mainstem Reservoir System inflows are above or below normal, the amount of water in the upper three reservoirs is balanced so that the effects are shared equally among these reservoirs. To preclude jeopardy for the listed species, the PA includes a more defined method of unbalancing the amount of water in these reservoirs as long as an extended drought (more than 1 year long) or an extremely high runoff into the Mainstem Reservoir System is not occurring. Unbalancing also provides benefits to young fish in these three reservoirs.

Unbalancing under the PA consists of purposefully lowering one of the upper three reservoirs approximately 3 feet to allow vegetation to grow

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around the rim, and then refilling the reservoir to inundate the vegetation. The unbalancing would rotate among the three reservoirs on a 3-year cycle. Higher spring releases would fill the downstream reservoir and provide a rising reservoir level for game and forage fish spawning. The subsequent 2 years of lower flows would expose bare sandbar habitat in the river reach between the two lakes for use by the protected birds. Unbalancing would also provide more bare sandbar habitat around the perimeter of the reservoirs for the birds in the drawdown year. In subsequent years, the inundated vegetation around the perimeter would be used by adult fish for spawning and by young reservoir fish to hide from predators.

Intrasystem unbalancing would be implemented in those years when there is not an excessive amount of flood control storage utilized or significant drawdown of the lakes due to severe drought conditions. To the extent possible, based on hydrologic conditions, a 3-year cycle would be followed for lowering the water level about 3 feet below normal the first year, followed by a refill of the lake to about 3 feet above normal the second year and declining lake levels (a “float” year) the third year. This 3-year cycle would be rotated among the upper three lakes on an annual basis so that each year one lake is high, one is low and the third is floating.

During the low year at a lake, the goal of the Corps would be to begin the runoff season on March 1 with a low lake elevation with respect to the other two upper lakes. Ideally, the lake would rise during the lake fish spawn and then hold the peak lake level for the remainder of the year. The following year, the high year, the lake would begin the runoff season high with respect to the other lakes, rise in elevation following the fish spawn, and then float downward during the remainder of the year. The float year, or third year, the lake would rise during the fish spawn and then drift downward for the remainder of the year so that it is in position to be at a low year as the cycle repeats.

Several reaches of the Missouri River currently have thermal powerplants that rely on the river or lake for cooling water. Concerns regarding adequate cooling capability in terms of water temperature surfaced in the early years of the Study. For that reason, a higher summer service level was included in almost all of the alternatives developed since the Draft EIS was released in 1994. All of the alternatives to the CWCP developed for the preliminary RDEIS, RDEIS, and this FEIS had a summer non-navigation service level of 18 kcfs. This service level is based on

water supply targets of 18 kcfs at Sioux City, Omaha, and Kansas City. This feature rarely gets used because the number of non-navigation service years rarely exceeded 5 years in the alternatives evaluated since 1994. All of the non-navigation years occurred in the 1930 to 1941 drought.

Many of the effects of the PA are very similar to those of the MCP that were identified in detail in Chapter 7 of the FEIS. The PA responds to droughts in a prorated response versus the triggered response of the MCP. This results in essentially very little response during single-year droughts under the PA; whereas, the MCP reacted more dramatically in almost every drought year. This slight difference in drought conservation, especially in the initial year or two of an extended drought, resulted in some differences in Mainstem Reservoir System operations that could lead to slight differences in effects on an annual basis. When the entire period of analysis is considered, however, the differences for most categories of effects are the same or very close to being the same. In other words, the “relative differences” are essentially the same in almost every category. Impacts of the PA on the Tribes are presented on Tables A-12-1 through A-12-12. Chapter 8 of the FEIS provides further detail on the differences in the effects between the CWCP and PA, with an initial comparison of the MCP and PA effects.

Recovery of Missouri River species provided protection under the ESA and the ecosystem on which they depend is far more comprehensive than the Corps’ operation of the Mainstem Reservoir System. The Corps is, therefore, proposing a Missouri River Recovery Implementation Program, or MRRIP, that includes multiple measures intended to benefit the species that goes beyond Mainstem Reservoir System operations under a new Water Control Plan. MRRIP is a comprehensive and integrated set of measures to be undertaken by the Corps in collaboration with the USFWS, working with the States, Tribes, and other stakeholders in the basin. The Corps believes that this approach offers the basin a real opportunity to move forward with a balanced and comprehensive approach to restore the ecosystem and meet its stated objectives. An overview of the Corps’ adaptive management strategy for the system and how it is being implemented as MRRIP is provided in Section A-6 of this Tribal Appendix. Further, Chapter 8.1 of this FEIS provides some perspective on how the PA will fit within this more comprehensive approach for the basin.

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Table A-12-1. Fort Peck Reservation impacts summary for the PA.

	Percent Change from CWCP
Wetland Habitat	-14
Riparian Habitat	0
Riverine Tern and Plover Habitat	25
Reservoir Tern and Plover Habitat	--
Reservoir Young Fish Production	--
Reservoir Coldwater Fish Habitat	--
River Coldwater Fish Habitat	1
River Warmwater Fish Habitat	-8
Native River Fish Physical Habitat	1
Flood Control	-1
Water Supply	2
Hydropower	--
Recreation	1
Navigation	--
Historic Properties	--

Light gray shading denotes a beneficial impact greater than 1 when compared to the CWCP.
 Black shading denotes an adverse impact greater than -1 when compared to the CWCP.
 -- denotes not available or not applicable

Table A-12-2. Fort Berthold Reservation impacts summary for the PA.

	Percent Change from CWCP
Wetland Habitat	--
Riparian Habitat	--
Riverine Tern and Plover Habitat	--
Reservoir Tern and Plover Habitat	38
Reservoir Young Fish Production	10
Reservoir Coldwater Fish Habitat	4
River Coldwater Fish Habitat	--
River Warmwater Fish Habitat	--
Native River Fish Physical Habitat	--
Flood Control	-47
Water Supply	6
Hydropower	--
Recreation	8
Navigation	--
Historic Properties	-3

Light gray shading denotes a beneficial impact greater than 1 when compared to the CWCP.
 Black shading denotes an adverse impact greater than -1 when compared to the CWCP.
 -- denotes not available or not applicable

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Table A-12-3. Standing Rock Reservation impacts summary for the PA.

	Percent Change from CWCP
Wetland Habitat	-62
Riparian Habitat	4
Riverine Tern and Plover Habitat	--
Reservoir Tern and Plover Habitat	4
Reservoir Young Fish Production	1
Reservoir Coldwater Fish Habitat	3
River Coldwater Fish Habitat	--
River Warmwater Fish Habitat	--
Native River Fish Physical Habitat	--
Flood Control	-5
Water Supply	15
Hydropower	--
Recreation	7
Navigation	--
Historic Properties	-1

Light gray shading denotes a beneficial impact greater than 1 when compared to the CWCP.

Black shading denotes an adverse impact greater than -1 when compared to the CWCP.

-- denotes not available or not applicable

Table A-12-4. Cheyenne River Reservation impacts summary for the PA.

	Percent Change from CWCP
Wetland Habitat	-9
Riparian Habitat	-33
Riverine Tern and Plover Habitat	--
Reservoir Tern and Plover Habitat	4
Reservoir Young Fish Production	1
Reservoir Coldwater Fish Habitat	3
River Coldwater Fish Habitat	--
River Warmwater Fish Habitat	--
Native River Fish Physical Habitat	--
Flood Control	-17
Water Supply	-4
Hydropower	--
Recreation	0
Navigation	--
Historic Properties	-1

Light gray shading denotes a beneficial impact greater than 1 when compared to the CWCP.

Black shading denotes an adverse impact greater than -1 when compared to the CWCP.

-- denotes not available or not applicable

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Table A-12-5. Lower Brule Reservation impacts summary for the PA.

	Percent Change from CWCP
Wetland Habitat	--
Riparian Habitat	--
Riverine Tern and Plover Habitat	--
Reservoir Tern and Plover Habitat	--
Reservoir Young Fish Production	7
Reservoir Coldwater Fish Habitat	--
River Coldwater Fish Habitat	--
River Warmwater Fish Habitat	--
Native River Fish Physical Habitat	--
Flood Control	31
Water Supply	0
Hydropower	--
Recreation	0
Navigation	--
Historic Properties	0

Light gray shading denotes a beneficial impact greater than 1 when compared to the CWCP.

Black shading denotes an adverse impact greater than -1 when compared to the CWCP.

-- denotes not available or not applicable

Table A-12-6. Crow Creek Reservation impacts summary for the PA.

	Percent Change from CWCP
Wetland Habitat	--
Riparian Habitat	--
Riverine Tern and Plover Habitat	--
Reservoir Tern and Plover Habitat	--
Reservoir Young Fish Production	7
Reservoir Coldwater Fish Habitat	--
River Coldwater Fish Habitat	--
River Warmwater Fish Habitat	--
Native River Fish Physical Habitat	--
Flood Control	38
Water Supply	0
Hydropower	--
Recreation	0
Navigation	--
Historic Properties	0

Light gray shading denotes a beneficial impact greater than 1 when compared to the CWCP.

Black shading denotes an adverse impact greater than -1 when compared to the CWCP.

-- denotes not available or not applicable

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Table A-12-7. Yankton Reservation impacts summary for the PA.

	Percent Change from CWCP
Wetland Habitat	5
Riparian Habitat	-4
Riverine Tern and Plover Habitat	2
Reservoir Tern and Plover Habitat	--
Reservoir Young Fish Production	8
Reservoir Coldwater Fish Habitat	--
River Coldwater Fish Habitat	--
River Warmwater Fish Habitat	-3
Native River Fish Physical Habitat	0
Flood Control	0
Water Supply	0
Hydropower	--
Recreation	0
Navigation	--
Historic Properties	--

Light gray shading denotes a beneficial impact greater than 1 when compared to the CWCP.

Black shading denotes an adverse impact greater than -1 when compared to the CWCP.

-- denotes not available or not applicable

Table A-12-8. Ponca Tribal Lands impacts summary for the PA.

	Percent Change from CWCP
Wetland Habitat	0
Riparian Habitat	-2
Riverine Tern and Plover Habitat	2
Reservoir Tern and Plover Habitat	--
Reservoir Young Fish Production	--
Reservoir Coldwater Fish Habitat	--
River Coldwater Fish Habitat	--
River Warmwater Fish Habitat	-3
Native River Fish Physical Habitat	0
Flood Control	0
Water Supply	--
Hydropower	--
Recreation	0
Navigation	--
Historic Properties	--

Light gray shading denotes a beneficial impact greater than 1 when compared to the CWCP.

Black shading denotes an adverse impact greater than -1 when compared to the CWCP.

-- denotes not available or not applicable

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Table A-12-9. Santee Reservation impacts summary for the PA.

	Percent Change from CWCP
Wetland Habitat	0
Riparian Habitat	-2
Riverine Tern and Plover Habitat	2
Reservoir Tern and Plover Habitat	--
Reservoir Young Fish Production	33
Reservoir Coldwater Fish Habitat	--
River Coldwater Fish Habitat	--
River Warmwater Fish Habitat	--
Native River Fish Physical Habitat	--
Flood Control	0
Water Supply	2
Hydropower	--
Recreation	2
Navigation	--
Historic Properties	--

Light gray shading denotes a beneficial impact greater than 1 when compared to the CWCP.

Black shading denotes an adverse impact greater than -1 when compared to the CWCP.

-- denotes not available or not applicable

Table A-12-10. Winnebago Reservation impacts summary for the PA.

	Percent Change from CWCP
Wetland Habitat	-2
Riparian Habitat	-2
Riverine Tern and Plover Habitat	--
Reservoir Tern and Plover Habitat	--
Reservoir Young Fish Production	--
Reservoir Coldwater Fish Habitat	--
River Coldwater Fish Habitat	--
River Warmwater Fish Habitat	--
Native River Fish Physical Habitat	0
Flood Control	0
Water Supply	-11
Hydropower	--
Recreation	0
Navigation	--
Historic Properties	--

Light gray shading denotes a beneficial impact greater than 1 when compared to the CWCP.

Black shading denotes an adverse impact greater than -1 when compared to the CWCP.

-- denotes not available or not applicable

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Table A-12-11. Omaha Reservation impacts summary for the PA.

	Percent Change from CWCP
Wetland Habitat	-2
Riparian Habitat	-2
Reservoir Tern and Plover Habitat	--
Reservoir Young Fish Production	--
Reservoir Young Fish Production	--
Reservoir Coldwater Fish Habitat	--
River Coldwater Fish Habitat	--
River Warmwater Fish Habitat	--
Native River Fish Physical Habitat	0
Flood Control	0
Water Supply	-11
Hydropower	--
Recreation	0
Navigation	--
Historic Properties	--

Light gray shading denotes a beneficial impact greater than 1 when compared to the CWCP.

Black shading denotes an adverse impact greater than -1 when compared to the CWCP.

-- denotes not available or not applicable

Table A-12-12. Iowa and Sac and Fox Reservations impacts summary for the PA.

	Percent Change from CWCP
Wetland Habitat	7
Riparian Habitat	-4
Reservoir Tern and Plover Habitat	--
Reservoir Young Fish Production	--
Reservoir Young Fish Production	--
Reservoir Coldwater Fish Habitat	--
River Coldwater Fish Habitat	--
River Warmwater Fish Habitat	--
Native River Fish Physical Habitat	-1
Flood Control	0
Water Supply	--
Hydropower	--
Recreation	0
Navigation	--
Historic Properties	--

Light gray shading denotes a beneficial impact greater than 1 when compared to the CWCP.

Black shading denotes an adverse impact greater than -1 when compared to the CWCP.

-- denotes not available or not applicable

A-13 CONSULTATION HISTORY

A chronological history of Master Manual consultation meetings, other meetings with Missouri River basin Tribes, and related correspondence is presented in this section.

November 19, 2003. Mr. Charles W. Murphy, Chairman of the Standing Rock Sioux Tribe sent a letter to COL Ubbelohde, Commander of the Omaha District. In this letter, Mr. Murphy expressed concern regarding how the Corps is conducting consultation on the Cultural Resource Management Plan, Programmatic Agreement and the Mad Bear Settlement Agreement. Further, the Standing Rock Sioux Tribe requests a meeting to discuss these issues, as well as management of the Master Manual EIS and low water levels.

October 31, 2003. A Tribal Summit was held in Rapid City, South Dakota. This meeting was the fourth in a series of Tribal Summits. Representatives of eight Missouri River Tribes were present at this Summit and the issues they brought up were similar to those expressed at the April 16, 2002 Summit.

Mr. Webster Two Hawk facilitated the meeting and Ms. Amy Zoller of Abraham Reporting, Inc. recorded the Tribal Summit in its entirety. Copies of the transcript will be provided to each Tribal Chairman and a copy is included in Section A-15 of this Tribal Appendix.

General Bill Grisoli, Commander of the NWD, and Colonel (COL) Kurt Ubbelohde, Commander of the Omaha District (NWO), represented the Corps. Other Corps attendees were: Ms. Karen Durham-Aguilera, Director of NWD Civil Works; Ms. Georgie Reynolds, Tribal Liaison for the Corps HQs in Washington, DC; Ms. Lynda Walker, NWD Tribal Liaison; Mr. John Eft, Ms. Jennifer Richman, Ms. Rose Hargrave, and Mr. Roy McAllister from NWD; and Mr. Larry Janis, Mary Lee Johns, and John Bartel from NWO.

Chairmen and/or delegates from eight Missouri River basin Tribes participated in this Tribal Summit. Attendees included: Mr. Tony Provost of the Omaha Tribe; Mr. Don Bucky Pilcher of the Sac and Fox Nation; Mr. Carl Four Star of the Fort Peck, Assiniboine and Sioux Tribes; Mr. Jim Snow from the Winnebago Tribe; Mr. Woody Corbine, Mr. Gary Collins (Northern Arapaho), and Mr. Bill

Schuler with the Mni Sose Coalition; Mr. Urban Bear Don't Walk of the Crow Tribe; Ms. Gay Kingman with the Cheyenne River Sioux Tribe and Mr. Tim Wapato; Mr. Lyle Denny and Mr. Tom Escarcega of the Fort Peck Tribe; and Mr. Fremont Fallis, Ms. Janet Thompson, and Ms. Bevelyn Brave Hawk of the Rosebud Sioux Tribe. Other attendees included Mr. Scott Larson from the USFWS and Mr. Paul Hofmann from BIA.

Topics discussed include Tribal Water Rights, updates and discussions on the Missouri River drought, the Missouri River Master Manual Review and Update, Adaptive Management, Cultural Resources Programmatic Agreement, and input from the Tribes on other issues and areas of concern. The NWD Commander reinforced his commitment to participate in a Tribal Summit annually and also his overall commitment to learn about the sovereign nations who live within the area of the NWD and to address Tribal interests and concerns.

October 28, 2003. Letter from Mr. Gary Collins, President of the Mni Sose, to BG Grisoli, NWD Commander, thanking him for the invitation to participate in the Missouri River Master Manual Tribal Summit on October 31, 2003 and providing the Corps with additional agenda topics for the Summit.

October 21, 2003. BG Grisoli, NWD Commander sent Mr. Clarence Skye, Director of the United Sioux Tribes Development Corporation, a letter thanking him for the invitation to meet on September 18, 2003 in Spearfish, South Dakota to hear concerns on the Missouri River Master Manual.

October 21, 2003. A letter was sent to all Missouri River basin Tribal Chairmen from BG Grisoli, NWD Commander, inviting them to attend the Missouri River Master Manual Tribal Summit meeting in Rapid City, South Dakota on October 31, 2003.

October 16, 2003. The U.S. Senate Committee on Indian Affairs holds an Oversight Hearing on the Missouri River Master Manual and Tribal Water Rights in Washington, DC. The following provided testimony at this hearing: BG William Grisoli, NWD Commander; Mr. George Dunlop, Acting Deputy Assistant Secretary of the Army for Civil Works; South Dakota Senator Tom Daschle; Mr. John Yellow Bird Steele, President of the Oglala Sioux Tribe; and Mr. Michael Claymore,

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Tribal Council Representative of the Standing Rock Sioux Tribe, who appeared for the Chairman of the Tribe, Mr. Charles W. Murphy. In addition, Mr. Michael Jandreau, Chairman of the Lower Brule Sioux Tribe, submitted a prepared statement. (Copies included in Section A-15 of this Tribal Appendix.)

September 18, 2003. BG Grisoli, NWD Commander, attended the Tribal Leaders meeting with Basin Tribal Chairmen in Spearfish, South Dakota.

September 16-18, 2003. Programmatic Agreement Consultation meeting held in Rapid City, South Dakota.

August 29, 2003. A letter was sent by Mr. Tim Mentz, Tribal Historic Preservation Officer (THPO) for the Standing Rock Sioux Tribe, to COL Ubbelohde, Commander of the Omaha District. In this letter, Mr. Mentz requests that the Corps consult with them on the Programmatic Agreement with his office and recognize the responsibilities of the THPO.

July 29-30, 2003. Programmatic Agreement Consultation meeting held in Pierre, South Dakota.

July 23, 2003. COL Ubbelohde, Commander of the Omaha District, sent a letter to Mr. Charles Murphy, Chairman of the Standing Rock Sioux Tribe. In this letter, COL Ubbelohde thanked Chairman Murphy for meeting with the Corps and responded to several other issues that came up at the July 14, 2003 meeting.

July 22, 2003. A letter was sent to COL Ubbelohde, Omaha District Commander from the Standing Rock Sioux Tribe. This letter provided the Corps a listing of items the Tribal Historic Preservation Office requires the Master Manual EIS to address through consultation.

July 2, 2003. COL Ubbelohde, Commander of the Omaha District, sent a letter to Mr. Charles Murphy, Chairman of the Standing Rock Sioux Tribe. In this letter, COL Ubbelohde confirmed a meeting concerning the Programmatic Agreement for the operation and management of the Missouri River Mainstem System on July 14, 2003. In addition, a proposed agenda was enclosed.

June 20-21, 2003. A Cultural Resources Tribal Task Force meeting was held in Bismarck, North Dakota.

June 13, 2003. COL Ubbelohde, Commander of the Omaha District, sent a letter to Mr. Charles Murphy, Chairman of the Standing Rock Sioux Tribe. In this letter, COL Ubbelohde requested a meeting to respond to concerns regarding consultation. Further, COL Ubbelohde asked if Mr. Tim Mentz and other Tribal Council members could participate in this meeting.

May 15, 2003. Mr. Charles W. Murphy, Chairman of the Standing Rock Sioux Tribe sent a letter to COL Ubbelohde, Commander of the Omaha District. In this letter, Mr. Murphy expressed his concern with the consultation approach being taken by the Corps for a Programmatic Agreement for the operation and management of the Missouri River Mainstem Reservoir System.

May 6, 2003. A Cultural Resources meeting was held in Lower Brule, South Dakota. Also on the agenda for this meeting was an update on the Missouri River Mainstem Reservoir AOP for spring 2003.

April 29, 2003. Mr. Michael White, NWD Director of Civil Works & Management, sent a letter to Mr. Michael Jandreau, Chairman of the Lower Brule Sioux Tribe. In it, Mr. White provided a copy of the presentation given on the AOP Spring 2003 Update and announcing another AOP meeting on May 6, 2003.

April 29, 2003. Mr. Michael White, NWD Director of Civil Works & Management, sent a letter to Mr. Harold Frazier, Chairman of the Cheyenne River Sioux Tribal Council. In it, Mr. White also provided a copy of the presentation given on the AOP Spring 2003 Update and announcing another AOP meeting on May 6, 2003.

April 18, 2003. A letter was sent by COL Ubbelohde, Commander of the Omaha District to Missouri River basin Tribal Chairmen inviting them to be a consulting party in the review and development of the Programmatic Agreement for the operation and management of the Missouri River Mainstem Reservoir System.

February 27, 2003. COL Ubbelohde, Commander of the Omaha District, sent a letter to Mr. Charles Murphy, Chairman of the Standing Rock Sioux Tribe. In this letter, COL Ubbelohde notified Mr. Murphy that a draft Programmatic Agreement was not available at this time. However, when input is received from Tribal representatives on the Cultural Resource Task Force, one will be prepared and provided to all Tribes.

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February 18, 2003. A meeting was held in Aberdeen, South Dakota with Great Plains Tribal Chairmen and representatives from the USFWS and the Corps.

February 10, 2003. Mr. Charles W. Murphy, Chairman of the Standing Rock Sioux Tribe, sent a letter to COL Ubbelohde, Commander of the Omaha District. In this letter, Mr. Murphy stated that the Cultural Resource Task Force meeting to be held on February 11-12, 2003 did not constitute consultation on the Programmatic Agreement for the entire Missouri River. Further, he requested a copy of the draft Programmatic Agreement.

February 10, 2003. BG Fastabend, NWD Commander, sent a letter to Mr. Arlyn Headdress, Chairman Assiniboine & Sioux Tribes of Fort Peck, informing him of recent developments concerning Corps operation of the Missouri River Mainstem Reservoir System and an invitation to meet with other Great Plains Tribal Chairmen, USFWS, and the Corps on February 18, 2003 in Aberdeen, South Dakota.

February 3, 2003. BG Fastabend, NWD Commander, sent a letter to Mr. Charles Murphy, Chairman, Standing Rock Sioux Tribe, agreeing to meet with the Standing Rock Sioux Tribe to discuss issues of concern related to current drought conditions in the Missouri River basin and the status of the Missouri River Master Manual.

January 13, 2003. A Fort Peck Tribal Council meeting was held. Mr. Larry Janis (NWO) represented the Corps at this meeting.

January 9, 2003. A Three Affiliated Tribal Council meeting was held. Mr. Larry Janis (NWO) represented the Corps at this meeting.

January 8, 2003. A Standing Rock Sioux Tribal Council meeting was held. Mr. Larry Janis (NWO) represented the Corps at this meeting.

January 7, 2003. Mr. Charles Murphy, Chairman of the Standing Rock Sioux Tribe, sent a letter to BG Fastabend, NWD Commander, requesting a meeting on Missouri River flows and the status of the Missouri River Master Manual.

December 17-19, 2002. An Intertribal Working Group Meeting was held in Rapid City, South Dakota to continue work on the Programmatic Agreement for the Operation and Management of the Missouri River Mainstem System.

December 5, 2002. A Cheyenne River Sioux Tribal Council meeting was held. Mr. Larry Janis (NWO) represented the Corps at this meeting.

December 4, 2002. A Lower Brule Tribal Council meeting was held. Mr. Larry Janis (NWO) represented the Corps at this meeting.

December 4, 2002. BG Fastabend, NWD Commander, sent a letter to Mr. Arlyn Headdress, Chairman of the Assiniboine & Sioux Tribes of Fort Peck regarding the Corps' review of the Watershed Initiative Grant Proposal that the Fort Peck Assiniboine Sioux Tribes, in conjunction with the Lower Missouri River Basin Coordinated Resources Management Council, propose to submit to EPA.

December 3, 2002. A Crow Creek Tribal Council meeting was held. Mr. Larry Janis (NWO) represented the Corps at this meeting.

December 2, 2002. A Santee Sioux Tribal Council meeting was held. Mr. Larry Janis (NWO) represented the Corps at this meeting.

November 19, 2002. A Yankton Sioux Tribal Council meeting was held. Mr. Larry Janis (NWO) represented the Corps at this meeting.

November 12, 2002. COL Knieriemen, Acting NWD Commander, sent a letter to Mr. Gary Collins, President of the Mni Sose, concerning collaboration in development of cultural resources agreements and plans for Corps and Tribal lands.

November 7, 2002. Mr. Michael Jandreau, Chairman of the Lower Brule Sioux Tribe, sent BG Fastabend, NWD Commander, a letter providing comments on the Draft Missouri River 2002–2003 AOP.

October 15, 2002. A meeting was held in New Town, North Dakota on the Draft Missouri River Mainstem Reservoir System AOP for 2002–2003.

October 10, 2002. The Intertribal Working Group held a meeting in New Town, North Dakota, hosted by the Three Affiliated Tribes and the Mni Sose. The purpose of this meeting was to continue to work on recommendations for early Tribal input into the revision of the Programmatic Agreement for the Operation and Management of the Missouri River Mainstem Reservoir System. Representatives from the Corps and the Advisory Council for Historic Preservation were observers at this meeting.

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September 11, 2002. Mr. Larry Cieslik, Chief of the Missouri River Basin Water Management Division, sent a letter to Mr. Tex Hall, Chairman of the Three Affiliated Tribes. The letter was an invitation to attend a presentation and discussion on the Draft AOP for 2002–2003 on October 15, 2002 in New Town, North Dakota.

August 20, 2002. Mr. Alvin Windy Boy, Chairman of the Chippewa Cree Tribe, received a letter from BG Fastabend, NWD Commander. The letter provided an update on the status of the Missouri River Master Manual Study.

August 6–7, 2002. An Intertribal Cultural Resources Working Group meeting was held in New Town, North Dakota.

July 25, 2002. Mr. Johnny Wauqua, Chairperson of the Comanche Tribe of Oklahoma, received a letter from COL Ubbelohde (Omaha District Commander) and BG Fastabend (NWD Commander). The letter was to follow up on and affirm the pledge to prioritize and protect funding for cultural resources activities within the Omaha District to ensure funding of approximately \$3 million annually.

July 18, 2002. Mr. Gary Collins, President of the Mni Sose, sent a letter to BG Fastabend, NWD Commander. This letter was an invitation to participate in an Intertribal Cultural Resources Working Group meeting in New Town, North Dakota on August 6 and 7, 2002.

July 15, 2002. Letter from COL Ubbelohde, Omaha District Commander, to the Missouri River Basin Tribes, thanking them for their participation in the Title VI Programmatic Agreement Working Group meeting held in Pierre, South Dakota on May 7, 2002. Also included was minutes of the meeting and a listing of Corps action items.

June 24, 2002. BG Fastabend, NWD Commander, sent a letter to Mr. Donald Grant, Chairman of the Omaha Tribe. This letter was to follow up the Government-to-Government consultation meeting on April 29, 2002 in Macy, Nebraska. In this letter, the Corps recognized that the Omaha Tribe claims water from the Missouri River for the purpose defined in the establishment of the Reservation for the Omaha Tribe.

May 20, 2002. COL Ubbelohde, Omaha District Commander, sent a letter to Mr. Donald Grant, Chairman of the Omaha Tribe. This letter was a follow up to the Omaha Tribe – Corps consultation

meeting on April 29, 2002 in Macy, Nebraska. Included in the letter was a map of easement locations on Reservation lands, a copy of a report on the latest Missouri River, Gavins Point to Platte River Confluence Degradation Update, and the status of digital ortho photography for the Missouri River within the Omaha Reservation boundary.

May 7, 2002. A Title VI Programmatic Agreement Working Group meeting was held in Pierre, South Dakota.

May 6, 2002. A letter from BG Fastabend, NWD Commander, was sent to Mr. Johnson Holy Rock of Pine Ridge, South Dakota. The letter thanks Mr. Holy Rock for attending and his words on behalf of his Tribe at the April 16, 2002 Tribal Summit in Rapid City, South Dakota.

April 29, 2002. Missouri River Master Manual Consultation Meeting between the Corps and the Omaha Tribe in the Omaha Tribal Council Room, at Macy, Nebraska. Omaha Tribe Attendees include Valentine Parker, Jr., Doran Morris, Orville Cayou, Eleanor Baxter, Antione Provost, Delmar Parker Sr., Thomas Parker, and Robert Warner. Corps attendees include COL Kurt Ubbelohde, Commander Omaha District, Rose Hargrave, Roy McAllister, John LaRandeau, Rick Moore, and John Remus. Minutes of the meeting were furnished to the Tribes.

April 16, 2002. A Tribal Summit was held in the Washington Room of the Ramkota Inn in Rapid City, South Dakota. This meeting, third in a series of Tribal Summits, was identified by the NWD Commander as Government-to-Government consultation on the Missouri River Master Manual. In accordance with the Government-to-Government consultation process, Tribal Summit meetings occur at critical points during the NEPA process and require the participation of NWD Commander. In this case, the Summit was held prior to the identification of a PA so that the NWD Commander would have maximum Tribal input prior to the selection of the PA. The Tribal Summit also provided an important opportunity to hear Tribal concerns on the Missouri River Master Manual and discuss opportunities where the Tribes and the Corps could work together to improve the well being and management of the Missouri River.

The Tribal Summit was recorded in its entirety by Sandy Semerad of Johnson, Henderson, Clayborn & Quinn Registered Professional Reporters. Copies of the transcript were provided to each

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Tribal Chairman and a copy is included in this Tribal Appendix.

Brigadier General (BG) David A. Fastabend, NWD Commander, represented the Corps. Chairmen and/or delegates from 18 Missouri River basin Tribes participated in this Tribal Summit.

Attendees included: Gary Collins (President, Mni Sose), Clarence Skye (Exec Director, United Sioux Tribes), Ms. Jackie Stocklin (Field Staffer for Senator Daschle), Ms. Aubrie James (Field Staffer for Senator Tim Johnson) and representatives from the Bureau of Indian Affairs (BIA), the U.S. Fish and Wildlife Service (USFWS), WAPA, and the Corps. An attendance roster was passed around for all to sign and at the conclusion of the meeting, and a copy was provided to all participants. In addition, copies of all handouts were provided to meeting participants.

Opening remarks were made by Harold Frazier (Council Man, Vice Chairman Cheyenne River Sioux Tribe, NCAI Aberdeen Area Vice President), Tom Ranfranz (Tribal President Flandreau Santee Sioux Tribe, Chairman of Great Plains Tribal Leaders Association), Gary Collins (President of Mni Sose, Tribal Water Engineer for Wind River Reservation), and BG David Fastabend. Listed below is a summary of these comments.

- Harold Frazier: Expressed concerns about increased electric rates, noxious weeds, and contaminated sediments in drinking water.
- Tom Ranfranz: Expressed concerns about increased electric rates, but happy to have opportunity to hear more about Master Manual as he was fairly new to it.
- Gary Collins: Expressed concerns about the lack of cultural resource data and other data gaps, concern that the Corps was fast tracking the Master Manual, and requested a Supplemental EIS be done.
- BG Fastabend: This Summit was identified in our Government-to-Government consultation process for the Missouri River Master Manual Study. He knows his duties. The Corps must have the Tribes trust and must communicate with the Tribes. We need the Tribes input.

In addition Fremont Fallis (Rosebud Sioux Tribe) expressed concerns about completion of the treaty analysis that was promised by Dr. Westphal, former ASA(CW) in a previous meeting in Rapid City.

- Tex Hall, Three Affiliated Tribes – Master Manual is weakest in what it says about cultural resources. Look at some type of legislation. Need money and WAPA has the money. Need to get serious about development of the legislation. Tribal opinion should carry as much weight as the Biological Opinion (BiOp). Pick the alternative that best fits the needs of all of the people. Look beyond the BiOp. Needs to have some standard that limits how low the lake drops. Consider Tribal Issues task force that meets quarterly. Cultural Resources Task Force decision needs to be made soon. A Supplemental EIS will be deferred if there is a Tribal Issues task force. Don't be sidetracked by river users who use it once or twice a month when the Tribes are there every day.

March 4, 2002. Mr. Gary Collins, President of the Mni Sose Intertribal Water Rights Coalition (Mni Sose) received a letter from BG David Fastabend, Commander of the NWD. In this correspondence, BG Fastabend declined an extension of the RDEIS Tribal and public comment period.

February 28, 2002. Mr. Gary Collins, President of the Mni Sose sent BG David Fastabend, NWD Commander, a letter providing comments on the RDEIS for the Missouri River Master Manual and requesting consideration of a 60-day extension of the RDEIS comment period.

February 13, 2002. A Missouri River Master Manual Tribal hearing and a Government-to-Government consultation meeting was held at the Fort Peck Tribes Cultural Center, in Poplar, Montana. Participants at the hearing and consultation meeting were representatives from the Fort Peck Tribes and the Corps. COL Kurt F. Ubbelohde, Omaha District Commander, was the hearing officer and Corps representative for the Government-to-Government consultation. The hearing and consultation meeting were recorded and copies of the transcript were provided to the Tribal chairman and any other individuals requesting copies.

February 12, 2002. A Missouri River Master Manual hearing was held at Eagle Butte, South Dakota with the Cheyenne River Sioux Tribe. COL Kurt F. Ubbelohde, Omaha District Commander, was the hearing officer. A court reporter recorded the hearing and copies of the

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transcript were provided to the Tribal chairman and any other individuals requesting copies.

January 30, 2002. A Missouri River Master Manual Tribal hearing with the Standing Rock Sioux Tribe took place at Prairie Knights Casino/Hotel southwest of Bismarck, North Dakota. COL Daniel W. Krueger, Deputy Commander NWD was the hearing officer. The hearing was recorded by a court reporter and copies of the transcript were provided to the Tribal Chairman and any other individuals requesting copies.

January 8, 2002. The Mni Sose Intertribal Water Rights Coalition Annual 2002 Board of Directors meeting was held in Rapid City, South Dakota. COL Kurt F. Ubbelohde, Omaha District Commander, Rick Moore, Pem Hall attended this meeting. Rick Moore provided a presentation /update on the Missouri River Master Manual RDEIS.

December 4, 2001. A Tribal and public workshop on the Missouri River Master Manual RDEIS and a Government-to-Government consultation and information meeting between the Corps and the Cheyenne River Sioux Tribe was held in Eagle Butte, South Dakota.

October 30, 2001. A Tribal and public workshop and hearing on the RDEIS was held with the Lower Brule Sioux Tribe at the Golden Buffalo Convention Center in Lower Brule, South Dakota. to provide information on the RDEIS for the Missouri River Master Manual. COL David A. Fastabend, NWD Commander, was the hearing officer. A court reporter recorded this hearing and a copy of the transcript was provided to the Tribal chairman and those who requested it.

October 24, 2001. Tribal and public workshop and hearing with the Three Affiliated Tribes, at the Four Bears Community Center, Newtown, North Dakota to provide information on the RDEIS for the Missouri River Master Manual. COL David A. Fastabend, NWD Commander, was the hearing officer. A court reporter recorded this hearing and copies of the transcript were provided to the Chairman of the Three Affiliated Tribes and any other individuals requesting copies.

October 10, 2001. Missouri River Master Manual RDEIS Tribal and public workshop and hearing with the Assiniboine and Sioux Tribes of the Fort Peck Reservation at the American Legion Building in Poplar, Montana. Lieutenant Commander (LTC)

Ubbelohde, Commander of the Omaha District, was hearing officer. A court reporter recorded this hearing and a copy of the transcript was provided to the Tribal chairman and those who requested it.

September 12, 2001. A Missouri River Master Manual Tribal Orientation Conference was held at the Bismarck Civic Center Arena in Bismarck, North Dakota. Purpose of the conference was to share and receive information about the Missouri River Master Manual RDEIS. In attendance at the conference was: Chairman Tex Hall of the Three Affiliated Tribes and the following staff: Patricia Thomas, Pemina Yellow Bird, Tiffany Martin, Patricia Thomas, Gail Baker, and Thomas Sage; Chairman Greg Bourland of the Cheyenne River Sioux Tribe and the following staff: Bronco LeBeau, Dennis Rousseau, David Nelson, Yvonne Clown, and Carol Elk Nation; Charles Murphy Chairman of the Standing Rock Sioux Tribe and the following staff: Tim Mentz Sr. and Mary Wilson; Don La Point and Clement Mackey of the Santee Sioux Tribe of Nebraska; Micki LaRoche and Elaine White Pipe of the Lower Brule Sioux Tribe; Fremont Fallis of the Rosebud Sioux Tribe and Sicangu Treaty Council; Carl Fourstar and Deb Madison of the Fort Peck Tribes; Antione Provost of the Omaha Tribe; Randy Perez of the Fort Belknap Assiniboine and Gros Ventre Tribes also representing Mni Sose; Michael Hackett of BIA Winnebago Agency; Dean Karsey Bureau of the U.S. Bureau of Reclamation (BoR); Al Sapa, Mike Olson, and Roger Collins, representing the USFWS; Nick Stas and Jim Bach, Western Area Power Administration; and Diane P. Mann-Klager, BIA Great Plains Office. Corps attendees include: Rose Hargrave, Project Manager for Missouri River Master Manual; Roy McAllister, Technical Manager; Rick Moore, Master Manual Tribal Liaison; Betty Newhouse, Patti Lee, and Jody Farhat. A 1-day conference was held with Tex Hall giving opening remarks, followed by formal presentations by the USFWS on the Endangered Species Act (ESA) and the Missouri River BiOp. The Corps presented a summary of the RDEIS and reviewed the impacts to the Tribes from the six alternatives. The Western Area Power Administration presented hydropower analysis in the RDEIS. There was time for questions and answers at the end. The conference was recorded and a transcript of the conference was sent to each of the nine Tribes that were in attendance. A copy of the record is included in this Tribal Appendix.

June 27, 2001. BG Carl A. Strock, NWD Commander, and COL Mark A. Tillotson, Omaha

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District Commander, held the second Government-to-Government Tribal Summit and information and listening meeting with the Missouri River basin Tribes, in Bismarck, North Dakota. Tribal Chairman Tex Hall represented the Great Plains Tribal Leaders Council and the Three Affiliated Tribes; Roxanne Sazue, Tribal Chairwomen, represented the Crow Creek Sioux Tribe; Don La Pointe and Clement Mackey represented the Santee Sioux Tribe of Nebraska; Dennis Rouseau represented the Cheyenne River Sioux Tribe; Charles Murphy, Tribal Chairman, represented the Standing Rock Sioux Tribe; Shaun Grassel represented the Lower Brule Sioux Tribe; Paul Falcon represented the Trenton Indian Service Area; Michael Canoy represented the Mni Sose Intertribal Water Rights Coalition; and Cora Jones represented the BIA, Regional Director of Great Plains Area Office. Chip Smith from the office of the Assistant Secretary of Army (Civil Works) attended the meeting. Al Sapa, Nell McPhillips, and David Redhorse represented the USFWS.

Tex Hall raised the following issues:

- 1) In light of the new Executive Order on consultation, Tex Hall wanted to know whether or not the Corps has a consultation policy in place with Tribes. General Stroock replied that we do not have anything in place, but we do have a draft consultation process.
- 2) A consultation process should identify time frames for meeting with the Tribes.
- 3) A consultation process should identify timeframes for response to the Tribes.
- 4) The Tribes need equitable treatment, with timelines that are reasonable for Tribes.
- 5) Partnerships should be developed that bring the Tribes to the table.
- 6) The Corps has the authority to transfer lands. The Corps has not progressed towards any resolution of the land transfer that was repealed in 1994.
- 7) Chairman Hall requested that an “Indian Desk” be established at Corps headquarters in Washington, DC, to provide a single point of contact and to be an advocate for Native Americans.

Roxanne Sazue raised the following issues:

- 1) She is concerned that there is no official consultation process.
- 2) The Master Manual RDEIS is a major problem in her eyes.
- 3) She does not believe in water quantification.

Don La Pointe and Clement Mackey raised the following issues:

- 1) They would like to see more Corps involvement with the Santee Sioux Tribe at Lewis and Clark Lake.
- 2) They would like a meeting with the Corps at the Gavins Point Dam Project Office.
- 3) They are concerned about how Tribal water rights are being addressed in the Master Manual RDEIS.

Cora Jones, Regional Director of the BIA, indicated there is an emotional tie between the Tribes and the Missouri River, and that the Tribes are deeply concerned about impacts to human remains and looting of cultural sites.

Allen White Lightening (Standing Rock Sioux Tribe, District of Cannonball) indicated the following:

- 1) In 1958, there were 22,000 acres of Standing Rock Sioux Tribal Lands that were taken by the Corps that the Tribe was never compensated for. He indicated that mineral rights of landowners are still intact and those rights need to be settled.
- 2) Construction of the Missouri River dams resulted in an economic impact to his Tribe. He believes there should be an economic return to those Tribes that lost land due to the construction of the dams. He indicated there continues to be an economic impact to his Tribe due to the operation of the dams.

Al Sapa of the USFWS office in Bismarck, North Dakota, presented background information about the ESA and the November 2000 USFWS BiOp on the Corps’ current operation of the Missouri River.

Rose Hargrave, the Corps’ Project Manager for the Master Manual, gave a presentation on the status of the Master Manual RDEIS, and indicated that the Corps wants to conduct meaningful Government-to-Government consultation with the basin Tribes but, to date, very few Tribes have engaged in the

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process. Rose agreed to look for funding for having some Tribally-led workshops and indicated that the Corps would work in partnership with the Tribes regarding the workshops. She discussed the Master Manual schedule and provided an outline of the Table of Contents for the RDEIS. She also provided copies of the Government-to-Government consultation process the Corps had developed and asked the Tribes to provide input into the process outlined.

February 14, 2001. A letter from BG Strock was sent to the basin Tribal Chairman. The letter encouraged the Tribes to participate in the ongoing Government-to-Government consultation process for the Master Manual RDEIS. General Strock offered to meet with the Tribal Chairman wherever it was most convenient. The Master Manual schedule was enclosed with the letter.

December 6, 2000. A Great Plains Regional Tribal Leaders Council meeting was held at Prairie Knights Convention Center. David Vader of the Omaha District of the Corps and Rick Moore of the NWD of the Corps attended the meeting to provide information and seek comments about the Corps' effort to develop an implementation plan for the USFWS BiOp and the status and key provisions of the Water Resources Development Act of 2000. Seven Tribal Chairmen were in attendance, along with several Tribal Council members representing other Tribes in the region.

November 29, 2000. Dan Israel, Attorney for the Three Affiliated Tribes; Tex Hall, Chairman of The Three Affiliated Tribes; and BG Carl Strock, NWD Engineer, met at the Corps Omaha District Office in Omaha, Nebraska. The meeting focused on Tribal trust assets and environmental justice, as they relate to operation of the Missouri River. Larry Cieslik and Rose Hargrave of the Corps attended the meeting. A briefing paper submitted by Dan Israel identified the following issues (see letter 61 in Section A-12):

- 1) Fort Peck Tribe: Federal funding of environmental justice would allow participation in Lewis and Clark ceremonies. Funding is needed for parks, boat ramps, and boats to promote tourism.
- 2) Standing Rock Sioux Tribe: Federal funding of environmental justice to build boat docks, increase fishing and hunting, and native terrestrial habitat development would benefit Tribal members and tourism.

- 3) Yankton Sioux Tribe: Under environmental justice, the Tribe has significant social needs and requests a modern up-to-date facility be provided for its elders.
- 4) Crow Creek Sioux Tribe: The environmental justice funding would allow the Tribe to improve and increase Missouri River habitat. This would improve hunting and fishing for Tribal members and guests.
- 5) Winnebago Tribe: The environmental justice funding would allow development of recreation facilities and other amenities, including improved wetlands and a fish hatchery.
- 6) Omaha Tribe: The Omaha Tribe is currently developing recreation at the Black Elk Park.
- 7) Fort Berthold: Environmental justice funding would be utilized to finance recreation facilities, actively participate in Lewis and Clark ceremonies, build boat docks, and build traditional cultural property monuments for both the Tribes and non-Native Americans.

Tribal participation in the Corps' process for developing an AOP for the operation of the Mainstem Reservoir System was also discussed. The Corps agreed that AOP meetings would be held on Tribal Reservations.

September 11, 2000. Charles Murphy, Chairman of the Standing Rock Sioux Tribe and Tex Hall, Chairman of the Three Affiliated Tribes, met with BG Strock in Bismarck, North Dakota, concerning the Corps' operation of the Mainstem Reservoir System. Discussion topics included protection of cultural resources, the Corps' consultation with the USFWS under Section 7 of the ESA, the Corps' Government-to-Government consultation with the Tribes on implementation of the USFWS BiOp, and Master Manual schedule and process.

August 7-8, 2000. A meeting was held at the Fort Peck Reservation. The purpose of the meeting was to discuss the Fort Peck Assiniboine and Sioux Tribe Missouri River flow modification test and Government-to-Government consultation on the Master Manual. Corps attendees at the meeting included William Miller, Omaha District Project Manager for the Fort Peck flow modification; Dave Vader, Omaha District Native America Coordinator; Rebecca Otto, Omaha District Archeologist; Peg O'Bryan, NWD Missouri River Native American Coordinator; Kimberly Oldham,

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Kansas City District Native American Coordinator; Roy Snyder, Fort Peck Lake Manager; and John Daggett, Fort Peck Operations Manager. The Tribes expressed concern about the proposed Fort Peck Dam flow changes. The Fort Peck Tribes asked for an update on Missouri River Master Manual RDEIS concerns they had related at a previous consultation meeting, held on 6 August, 1999. Specific concerns brought up by Tribal members and local ranchers included:

- 1) The 1993 River Access Study;
- 2) The need for cadastral surveys of Fort Peck Tribal lands;
- 3) Existing and future needs for bank stabilization (The Fort Peck Tribes were advised of steps for seeking bank stabilization under Corps programs and authorities.);
- 4) The need for a comprehensive cultural resources survey of Fort Peck Tribal lands; and
- 5) The need to conduct a depletion analysis to determine the impacts of a potential 60,000-acre-foot annual withdrawal from Fort Peck Lake. Tribal members and local ranchers indicated that 50,000 acre feet would be used to irrigate potatoes and 10,000 acre feet would be used for other purposes.

February 15-17, 2000. Environmental justice training; Great Plains Tribal Leaders - Federal Agency Conference, Aberdeen, South Dakota; and Reburial of Remains from St. Phillips Cemetery. COL Mark A. Tillotson, Commander of the Corps Omaha District; Mr. Chip Smith of the Office of the Assistant Secretary of the Army for Civil Works; and several NWD and Omaha District Corps staff participated in a conference sponsored by the Great Plains Regional BIA to exchange information on existing programs and to develop strategies for improving agency services to basin Tribes. During the conference, several side meetings were arranged between the Corps, Tribes, and the BIA. Corps presentations at the conference included the mission of the Omaha District, Tribal activities and initiatives, business development, and the Study.

November 22, 1999. A meeting was held between the Ogallala Sioux Tribe and the Corps to discuss Government-to-Government consultation with the Tribes relative to the Study. COL Michael Meuleners, Commander for the Missouri River

Region of the Corps NWD, provided background information concerning the Study, the schedule for the Study, and a summary of alternatives submitted to the Corps for consideration by basin interests, including the Mni Sose Intertribal Water Rights Coalition. The concept of adaptive management and a potential recovery committee for threatened and endangered species, opportunities for Tribal comment, and Tribal coordination were also discussed. The Oglala Sioux Tribe did not consider this meeting to be a consultation meeting.

October 15, 1999. Letter from COL Michael Meuleners, Commander for the Missouri River Region of the Corps NWD, in reply to Ogallala Sioux Tribe letter of 21 July 1999, requesting Government-to-Government consultation with the Oglala Sioux Tribal Council on the Study and the South Dakota Terrestrial Wildlife Habitat Restoration Act (Title VI). COL Meuleners agreed to a consultation meeting on 25 October 1999 from 10:00 a.m. to 2:00 p.m. in Pine Ridge, South Dakota. The agreed upon meeting actually took place 22 November 1999.

September 13-14, 1999. The Mni Sose Intertribal Water Rights Coalition Board of Directors held a meeting in Mandan, North Dakota. COL Meuleners, Commander of the Missouri River Region of the Corps NWD, provided an update on the Master Manual.

August 26, 1999. The Crow Creek Sioux Tribe and the Corps held a Master Manual consultation meeting. Dave Vader and Peg O'Bryan represented the Corps.

August 24, 1999. A Standing Rock Sioux Tribe - District of Fort Yates Master Manual consultation meeting was held in Fort Yates, North Dakota, in the BIA Standing Rock Agency Conference Room. Corps attendees included David Vader, Kimberly Oldham, and John Bartel. Kimberley Oldham presented a Master Manual update previously given at the consultation meeting with the Standing Rock Sioux Tribe held 27-28 July 1999. Provided materials included a summary of alternatives presented in the Preliminary RDEIS, Tribal consultation, and coordination updates. Tribal members raised the following issues:

- 1) Tribal members do not believe that the Preliminary RDEIS adequately addresses Tribal concerns.

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- 2) Tribal members indicated that, to date, there has been no Government-to-Government consultation with their Tribe.
- 3) Tribal members are concerned about flooding at Fort Yates and Wakpala.
- 4) Tribal members are concerned about erosion encroachment on recreation facilities at Kenel Flats, Four Mile Creek, Fort Yates, and Walker Bottoms caused by operation of the reservoirs.
- 5) Tribal members would like to see the lands above elevation 1,620 mean sea level transferred back to the Tribe.
- 6) Tribal members believe that impacts to their fisheries resulting from construction and operation of the dams should be mitigated.
- 7) Tribal members indicated the riverbed of the lake belongs to the Tribe.
- 8) Tribal members believe they have not had an equitable share of the hydropower benefits resulting from the dams.
- 9) Tribal members believe that, overall, they have not shared in the benefits of the Pick-Sloan project.
- 10) Tribal members of the Fort Yates District believe the Corps and the Tribe need to examine the impacts resulting from construction and operation of the dams and the need for appropriations.
- 11) Tribal members of the Fort Yates District would like the Corps and the Federal Emergency Management Agency to study and develop a contingency plan for relocation of the community of Fort Yates and Wakpala.

August 18, 1999. A letter from COL Michael Meuleners, Commander for the Missouri River Region of the Corps NWD, was sent to Chairman Michael Jandreau, Lower Brule Sioux Tribe. The letter reaffirms COL Meulener's desire to meet and consult with the Lower Brule Sioux Tribe on the Master Manual.

August 6, 1999. The Fort Peck Assiniboine and Sioux Tribes and Corps held a Master Manual consultation meeting at the Spotted Bull Treatment Center on the Fort Peck Reservation. Corps attendees included Larry Cieslik, Rose Hargrave, David Vader, Roy McAllister, Kimberly Oldham, and Darrin McMurry. Ms. Hargrave presented an

update on the Study. Copies of the issues and impacts identified at the consultation summit held in Rapid City, South Dakota, were provided. Fort Peck Tribal members raised the following issues:

- 1) Tribal members indicated that there was a need for a cadastral survey. They believe that the survey would provide a baseline from which erosion impacts could be measured.
- 2) Tribal members were concerned that an increase in spring releases from Fort Peck Dam would result in increased bed and bank erosion.
- 3) Tribal members requested cultural resources surveys of the Fort Peck Reservation reach of the Missouri River.
- 4) Tribal member were concerned that present and future sites for intakes not be subject to erosion. They were also concerned that the intakes not impact cultural sites.
- 5) Tribal members indicated there was a need to conduct a depletion analysis to determine the impacts of a potential 60,000-acre-foot annual withdrawal from Fort Peck Lake. Tribal members and local ranchers indicated that 50,000 acre feet would be used to irrigate potatoes and 10,000 acre feet would be used for other purposes.
- 6) Tribal members requested that the Corps provide river access to recreation areas.
- 7) Tribal members requested bank stabilization for eroding river and lake areas on the Fort Peck Reservation.
- 8) Tribal members requested to know the status of funding (\$35,000) to complete an "ice pore-pressure study" for bank failures.
- 9) Tribal members requested development of river access and recreation areas, particularly in light of the upcoming Lewis and Clark commemoration.

July 27-28, 1999. A Study consultation meeting was held between the Standing Rock Sioux Nation, Rosebud Sioux Nation, Crow Creek Sioux Nation, and the Corps. The meeting was held at the Prairie Knights Convention Center, on the Standing Rock Reservation. Corps attendees included COL Michael Meuleners, Commander of the Missouri River Region of the Corps NWD; Rose Hargrave; Dave Vader; and Kimberly Oldham. Rose

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Hargrave presented an update on the Master Manual, including the current approved schedule, Tribal consultation to date, and a Tribal coordination update.

Standing Rock Tribal members at the meeting raised the following issues:

- 1) Tribal members requested the Corps transfer lands back to the Tribe using administrative procedures.
- 2) Tribal members questioned the U.S. Geological Survey quantification of 303,000 acres of practicable irrigable land on their Reservation and the estimated depletion of 1.2 MAF. Potential Winters Doctrine Water Rights could be based on this quantification and the Tribal members want to make sure the estimates are correct.
- 3) Tribal members are concerned about the erosion of Tribal Lands around Lake Oahe.
- 4) Tribal members identified four potential sites for recreational development of Tribal Lands around Lake Oahe.
- 5) Tribal members indicated that the promises of the Pick-Sloan project never materialized for their Tribe.
- 6) Tribal members indicated that the meeting was considered a formal consultation meeting.
- 7) Tribal members requested protection of cultural sites on their lands.
- 8) Tribal members were concerned about flooding at Wakapala and flooding in general.

Tribal members of the Rosebud Sioux Nation raised the following issues:

- 1) Tribal members believe the RDEIS should be rewritten to include a Tribal alternative and that the Tribal alternative should include compensation for lands taken for the Pick-Sloan project.
- 2) Tribal members believe the Corps should contract with their Tribe for the inventory and protection of cultural resources.
- 3) Tribal members believe the Corps should provide some Tribal members paleontology training.

- 4) Tribal members requested funding from WAPA so that their Tribe could have a greater share of Pick-Sloan project benefits.

The Crow Creek Sioux Nation raised the following issues:

- 1) Tribal members expressed concern about discharges from an oil separation lagoon above Big Bend Dam entering their swimming area.
- 2) Tribal members were concerned the areas near bridges were unsafe for swimmers and that safety measures should be taken.
- 3) Tribal members were concerned that Tribal cemeteries would be relocated if they are endangered by erosion or flooding.
- 4) Tribal members requested that a Tribal museum be developed in partnership with the Corps. They believe that the \$350,000 in the Federal trust account under Section 6 of PL87-735 (Big Bend Act) should be used to build the museum.
- 5) Tribal members expressed concern about the discoveries of unexploded ordinance and pollutants at the old bombing range Formerly Used Defense site on their lands.
- 6) Tribal members inquired about the safety of the dams.
- 7) Tribal members requested to know if any portion of the Missouri Valley Improvement Act, sponsored by Senator Bob Kerrey (Nebraska), addressed Tribal needs.
- 8) Tribal members were concerned about protection of Arikara cultural sites from erosion and looting.
- 9) Tribal members requested review of draft Study documents.

June 16-18, 1999. A Mni Sose Intertribal Water Rights Coalition Board of Directors meeting was held in Flandreau, South Dakota. Corps attendees included Rose Hargrave, Doug Latka, Dave Vader, and Kimberley Oldham. Rose Hargrave presented an update on the Study and an update on Tribal coordination and consultation. The Mni Sose Intertribal Water Rights Coalition Board of Directors raised the following issues:

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- 1) They are concerned about impacts of the Master Manual revision on Tribal water rights.
- 2) They are concerned about impacts of the Corps' operation of the Mainstem Reservoir System project on cultural resources.
- 3) They would like a meaningful consultation process between the Corps and the Tribes.
- 4) They believe that the Tribes have not had an equitable share of Pick-Sloan benefits. For this reason they do not believe the Preliminary RDEIS accurately portrayed Tribal impacts.
- 5) They are concerned about erosion of Trust lands due to operation of the reservoirs.
- 6) They believe that RDEIS rewrites should include history, socio-economic impacts, and provide for hydropower compensation.

June 8, 1999. A letter offering Government-to-Government consultation was sent to the Tribal chairmen of the Missouri River basin Tribes. COL Michael Meuleners, Commander of the Missouri River Region of the Corps NWD, signed the letter "offering to consult."

February 23-24, 1999. A Government-to-Government consultation summit (reference in compendium) was held in Rapid City, South Dakota, with representatives of a number of Tribes in the Missouri River basin and the Corps. This consultation was facilitated and documented by the River Group, an independent consortium of professionals in public policy. The following themes emerged:

- 1) Individual Tribes should be consulted by the Corps on the Master Manual and on other Tribal issues.
- 2) Tribal issues should be given special and specific attention in the RDEIS.
- 3) Impacts to cultural resources resulting from the Corps' operation of the Mainstem Reservoir System need particular attention. An additional forum outside of the Master Manual is also needed to address other cultural resources issues.
- 4) Development of the schedule for the Master Manual did not include Tribal input.

The Tribes who participated in the summit also expressed concern about impacts to the Tribes resulting from current operation of the system. Irrigation, erosion, sedimentation, hydropower, and flood control benefits are common concerns for the Tribes.

Participating Tribes believe that the irrigation that has occurred is not what was envisioned at the time that the Pick-Sloan dams were proposed. Some irrigation has occurred on the Reservation, but not in the magnitude envisioned earlier by the Tribes. The irrigation benefits are perceived as being greater for non-American Indians than for Tribes.

Lands along the river that were purchased by the Corps continue to erode, and the river is again beginning to encroach on Tribal Lands. The Tribes do not wish to sell any more lands to the Government but would like compensation for lands that have been and continue to be eroded by operation of the reservoirs. Furthermore, the impacts of erosion on cultural sites; sacred sites; and vegetation that is used for religious ceremonies, healing, and food is a concern. Impacts of erosion on Tribal recreation sites are also a concern to the participating Tribes.

The impact of sedimentation on Tribal water intakes was raised by the participating Tribes. Tribes are concerned about sediment that may contain heavy metals, which could potentially impact the health and well being of Tribal members.

The Tribes believe that the non-American Indians are receiving greater hydropower benefits than the Tribes. An Ogallala Sioux Tribal member indicated that Tribes have not realized any of the monetary benefits from hydropower revenues, and that some of the revenues should be given back to the Tribes. A Rosebud Sioux Tribal member indicated that deregulation of electricity would allow the Tribes to have more flexibility. He indicated the Tribes would like to have a utility company and be the provider and not the customer.

The Tribes believe that flood control benefits provided by the Mainstem Reservoir System are greatest for non-American Indians communities and indicated the Pick-Sloan plan was unfavorable to the Tribes. The Tribes believe they have not realized any flood control benefits at their communities, but that several Tribal communities were flooded and relocated because of the construction of the Mainstem Reservoir System dams.

During and following the summit, the Three Affiliated Tribes (Mandan, Hidatsu, and Arikara) the Fort Peck Assiniboine and Sioux Tribes, Standing Rock Sioux Tribe, Rosebud Sioux Tribe, and Crow Creek Sioux Tribes expressed their willingness to enter into Government-to-Government consultation with the Corps. Concerns about the Corps' operation of the Mainstem Reservoir System and potential Tribal impacts from changed operations, as well as numerous other issues raised by the Tribes that are beyond the scope of this NEPA review, are captured in the above consultation history.

January 22, 1999. A letter was sent to the Missouri River basin Tribes to invite them to participate in the Tribal consultation summit for the Master Manual scheduled for 23-24 February 1999 in Rapid City, South Dakota. COL Michael S. Meuleners, Commander of the Missouri River Region of the Corps NWD, signed the letter.

December 15, 1998. A letter was sent to the Missouri River basin Tribes to invite them to participate in the Tribal consultation summit to be held in January or February 1999. The letter indicated that the purpose of the Tribal consultation summit was to jointly develop a Government-to-Government consultation process; identify and clarify issues raised by the Missouri River basin Tribes during the Study process; and produce a draft summary for each basin Tribe and for inclusion in the administrative record of the RDEIS. BG Robert H. Griffin, Commander of the Corps NWD, signed the letter.

September 10, 1998. The Mni Sose Intertribal Water Rights Coalition Board of Directors meeting was held with 23 Tribes represented. COL Michael Meuleners, Commander of the Missouri River Region of the Corps NWD, provided an overview of the Study process and schedule, and encouraged Tribal input and participation into the decision process for selecting an alternative to the CWCP. Rose Hargrave gave a presentation on the alternatives presented in the Master Manual Preliminary RDEIS.

May 14, 1998. A coordination and consultation meeting was held between Mni Sose Intertribal Water Rights Coalition basin Tribal representatives and the Corps. Approximately 20 Tribal representatives from four individual Tribes participated. Corps participants included Lieutenant COL John Craig, Larry Cieslik, Rose Hargrave and Peg O'Bryan from the Missouri River

Region of the Corps NWD, and Dave Vader of Corps Omaha District. Two EPA representatives also attended. Topics of discussion included the Study, developing a Government-to-Government consultation process, and developing collaborative processes to address non-operational issues.

Prior to 1998 numerous meetings occurred between the Missouri River basin Tribes and the Corps. During these meetings, the Corps and Tribes discussed proposed alternative flow plans for the Master Manual revision, as well as issues directly related to the operation of the reservoirs and issues not directly related to the operation of the reservoirs that are important to the Tribes and the Corps.

A-14 MISSOURI RIVER MASTER MANUAL GOVERNMENT-TO- GOVERNMENT CONSULTATION

A-14.1 Introduction

There are 30 Tribes within the Missouri River basin, with 13 Reservations or Tribal Lands bordering the Missouri River or the Mainstem Reservoir System. The Corps recognizes that Tribal Governments are sovereign entities, with rights to set their own priorities, develop and manage Tribal and trust resources, and be involved in Federal decisions or activities that have the potential to affect these rights.

Government-to-Government consultation with Tribes on the Study has and will be initiated and continue throughout the NEPA process. Consultation will include correspondence, face-to-face meetings, and other forums as necessary. After the Record of Decision (ROD) has been signed, the Tribes are encouraged to continue Government-to-Government consultation through the Annual AOP process. Any further discussions on issues not related to the operation of the Mainstem Reservoir System or the AOP process should continue to be discussed between the Corps and the Tribes. It is incumbent on the Corps to provide meaningful processes outside of the Master Manual that provide for mutual resolution of these issues between the Corps and the basin Tribes. In addition, participation by basin Tribes in the

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planning and execution of MRRIP is extremely important.

The following outlines the Government-to-Government consultation the Corps has developed for the Study. The Corps has repeatedly solicited input from the basin Tribes regarding the nature, validity, and adequacy of the process outlined.

A-14.2 Objectives of Government-to-Government Consultation

The objectives to be accomplished by Government-to-Government consultation are as follows:

- 1) Maintain a Government-to-Government relationship between the Corps and Tribes who may have interests and resources within the Missouri River projects.
- 2) Fulfill the provisions of Executive Order 13175, Tribal Consultation and Coordination.
- 3) Fulfill obligations and commitments in the executive memorandum on Government-to-Government relations dated April 29, 1994.
- 4) Provide a structured means to fully incorporate American Indian perspectives and interests into the decisions that may have an impact on Tribal Trust resources.
- 5) Fulfill responsibilities under Section 106 of the National Historic Preservation Act of 1966, as amended, and implement regulations that require consultation with appropriate Tribes and interested parties.
- 6) Fulfill responsibilities under the Native American Graves Protection and Repatriation Act of 1990.
- 7) Fulfill obligations under DoD, Army, and Corps policies and principles when dealing with Tribes.

A-14.3 Identification of Consulting Parties

A-14.3.1 Tribal

All Federally recognized Tribes within the Missouri River basin are identified as potential consultants. Tribal points of contact, via letter, phone, and in person, will be asked to identify other potentially interested Tribes, Tribal affiliates, and Tribal grassroots organizations outside of the

Missouri River basin who may have an interest in the Study. If additional interested parties are identified via consultations with the Federally recognized Tribes, they will be brought into the consultation process. Tribal chairpersons of each of the 30 Federally recognized Tribes of the Missouri River basin, or their identified designated representative, are the primary spokesperson for their Tribe in the Government-to-Government consultation. While the Corps will seek comments from all Tribal members, the Tribal council and the chairperson are considered to be the decision makers for their Tribe.

Tribal organizations may also participate in the Government-to-Government consultation but are empowered to make decisions only to the extent that they are authorized by the Tribal chairperson or their designee.

A-14.3.2 Corps

The Commander of the NWD of the Corps, or a designated representative, including another military officer or civilian employee of NWD, is the primary spokesperson for the Corps in the Government-to-Government consultation.

A-14.4 Communications

Open and honest communication is the foundation of Government-to-Government consultation. Consulting parties are encouraged to take advantage of opportunities to exchange information and discuss issues during both informal forums and the formal consultation process. Forms of communication to be used during the consultation process include face-to-face meetings when possible, letters, and telephone. Electronic (i.e., computer, e-mail) and fax communications may also be used if all consulting parties have the technical staff and equipment to utilize these means of communication.

A-14.5 The Consultation Process

The consultation process identified below fully integrates the DoD's principles and practices of meaningful consultation with the Tribes by:

- 1) Recognizing that there exists a unique and distinctive political relationship between the United States and the Tribes that mandates that whenever DoD actions may have the potential to significantly affect protected Tribal resources, Tribal rights, or Tribal Lands, DoD must provide affected Tribes an opportunity to

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participate in the decision-making process that will ensure these Tribal interests are given due consideration in a manner consistent with Tribal sovereign authority;

- 2) Consulting consistently with Government-to-Government relations and in accordance with protocols mutually agreed to by a particular Tribe and DoD, including necessary dispute resolution processes;
- 3) Providing timely notice to, and consulting with, Tribal Governments prior to taking any actions that may have the potential to significantly affect protected Tribal resources, Tribal rights, or Tribal Lands;
- 4) Consulting in good faith throughout the decision-making process; and
- 5) Developing and maintaining effective communication, coordination, and cooperation with Tribes, especially at the Tribal leadership-to-installation commander level and the Tribal staff-to-installation staff levels.

The steps in the Government-to-Government consultation process for the Study are:

- 1) Initiation of Government-to-Government consultation is the responsibility of the Corps. By written correspondence, the NWD Commander will request that the Tribes engage in Government-to-Government consultation with the Corps. This letter will be sent as early in the process as possible. The purpose of this letter will be to define the Study and to indicate that this letter is the first step in the formal Government-to-Government consultation process.
- 2) The Corps will follow up after the initial letter is mailed with a telephone call. Information from these telephone calls will be documented and follow-up actions requested by the Tribe will be noted, incorporated as appropriate, and reported to appropriate Corps staff. If a Tribe elects not to respond to the initial consultation letter or subsequent telephone calls, the Corps will periodically, throughout the consultation process, attempt to initiate consultation with the Tribe. Repeated attempts to offer consultation will be provided by letter and subsequent telephone calls.
- 3) Tribes may accept the Corps' offer of Government-to-Government consultation by

any form of communication. It is incumbent on the Corps to verify that the decision to consult reflects the wishes of the Tribal chairperson or their designee.

- 4) In cooperation with the Tribal Leader or their designee, arrangements for an initial consultation meeting will be made as soon as possible after the Tribe accepts the Corps offer of consultation; consultation meetings will take place at mutually agreed upon intervals and locations. These meetings may include other consultations so as not to burden the Tribes with multiple meetings. Agendas for consultation meetings will be mutually developed by the consulting parties and should reflect consultation issues that are of primary importance to the Tribe. Initial meetings may focus on mutual identification and separation of issues into those that are directly related to the operation of the Mainstem Reservoir System, and those issues that are not directly related to operations. Upon identification of issues directly related to the Corps' operation of the Mainstem Reservoir System, consultation relative to those issues should proceed. Some consultation discussions may also focus on Tribal participation during official NEPA comment periods, including joint development of Tribal workshops and hearings.
- 5) In addition to the consultation meetings described above, to ensure that there is meaningful Government-to-Government consultation occurring at critical points during the Study NEPA process, the Corps will offer face-to-face meetings with both consulting and non-consulting Tribal chairpersons or their designees and the NWD Commander or his designee. These meetings will be offered at a minimum during the following points in the process:
 - a) Prior to release of the RDEIS (June 27, 2001) and after RDEIS comment period ended (April 16, 2002);
 - b) Prior to identification of a selected plan in the FEIS (October 31, 2003);
 - c) Prior to a ROD; and
 - d) Prior to implementation of the revised flow plan.

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A-14.6 Resolution of Issues

The intent of Government-to-Government consultation is to provide for resolution of issues related to the Corps' operation of the Mainstem Reservoir System at the level of the individual Tribes and the NWD; however, resolution of some issues may be beyond the scope and authority of the

NWD Commander. Unresolved issues identified in formal Government-to-Government consultation may be elevated to higher levels within the Corps and/or to the Office of the Assistant Secretary of the Army for Civil Works. Consulting parties will develop joint procedures for elevation and ultimate disposition of unresolved issues. This may include annual meetings to maintain relationships and provide relevant information. Tribal resolutions or other Tribal procedures may serve as tools for defining unresolved Tribal issues.

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A-15 COMPENDIUM OF AMERICAN INDIAN COMMENTS

This section is a compendium of Tribal hearing transcripts, meeting records, comments, correspondence, and meeting materials. It provides a written record of consultation between the Corps

and the Tribes arranged chronologically from 1989 to the present. Following a comprehensive, chronological list of records, this volume, Appendix A, Part 1 (Volume III), contains copies of record numbers 1 through 70. Appendix A, Part 2 (Volume III) contains copies of record numbers 71 through 104.

1989

1. Oglala Sioux Tribe Letter (October 12, 1989) A1-55

1992

2. Oglala Sioux Tribe Rural Water Supply System Letter (June 11, 1992) A1-61

1993

3. Missouri River Master Water Control Manual Review & Update, Executive Summary (May 14, 1993) A1-63
4. Standing Rock Sioux Tribe Review and Comments (July 7, 1993) A1-85
5. Turtle Mountain Band of Chippewa Indians Letter (July 28, 1993) A1-163
6. Santee Sioux Tribe of Nebraska Letter (July 29, 1993) A1-165
7. Mandan, Hidatsa, and Arikara Nation Letter (July 30, 1993) A1-167
8. Ponca Tribe of Nebraska Letter (August 10, 1993) A1-169
9. Rosebud Sioux Tribe Letter (August 11, 1993) A1-171
10. Winnebago Tribe of Nebraska Letter (August 18, 1993) A1-175
11. Mni Sose Intertribal Water Rights Coalition Response to PDEIS (September 1993) A1-177
12. Mni Sose Intertribal Water Rights Coalition Testimony (October 11, 1993) A1-233
13. Doug Bereuter, Member of Congress, Letter (December 28, 1993) A1-237

1994

14. Mni Sose Intertribal Water Rights Coalition Letter (March 29, 1994) A1-243
15. Mni Sose Intertribal Water Rights Coalition Response to Corps of Engineers Preferred Alternative Plan (June 6, 1994) A1-247
16. Cheyenne River Sioux Tribe Letter (September 1, 1994) A1-253
17. Mandan, Hidatsa, and Arikara Nation Letter (September 1, 1994) A1-255

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18. Mni Sose Intertribal Water Rights Coalition Response to the U.S. Army Corps Draft Environmental Impact Statement (September 14, 1994) A1-257
19. Standing Rock Sioux Tribe's Response to the Army Corps of Engineers Draft Environmental Impact Statement (October 17, 1994) A1-269
20. Yankton Sioux Tribe Letter from Jim Stone A1-271
21. Omaha Tribe of Nebraska Letter (September 28, 1994) A1-275
22. Dale M. Cochran, Secretary of Agriculture Letter (October 25, 1994) A1-277
23. Mni Sose Intertribal Water Rights Coalition Comments on the Draft Biological Opinion (November 30, 1994) A1-283
24. Mni Sose Intertribal Water Rights Coalition Letter from Richard Bad Moccasin (December 22, 1994) A1-291

1995

25. Fort Peck Tribes Letter (February 22, 1995) A1-295
26. Mni Sose Intertribal Water Rights Coalition Supplemental Comments (February 28, 1995) A1-297
27. Mni Sose Intertribal Water Rights Coalition Letter (March 16, 1995) A1-315
28. Mni Sose Intertribal Water Rights Coalition Board of Directors Meeting Letter (May 2, 1995) A1-317
29. Mni Sose Intertribal Water Rights Coalition Comments on the Proposal for Revisiting the Draft Environmental Impact Statement (June 27, 1995) A1-327
30. Mni Sose Intertribal Water Rights Coalition Response to the Corps Preliminary Recommendations (July 13, 1995) A1-337
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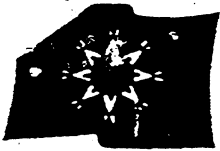
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Tribal Correspondence 1989





Oglala Sioux Tribe

Phone (605) 867-5821
Box II
Pine Ridge, South Dakota 57770



Office of the President

President
Paul Iron Cloud
Vice President
Harold Dean Salway
Secretary
Nancy Hussman
Treasurer
Charmaine Wisecarver
Fish Member
Frank Marshall

October 12, 1989

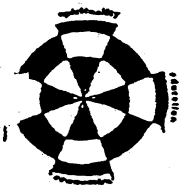
Brigadier General Robert Ryan
Dept. of the Army
Missouri River Division
Corp of Engineers
P.O. Box 103
Downtown Station
Omaha, NE 68101-903

Dear Sir:

The Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota, expresses its appreciation for the opportunity to present a statement to governors of the Missouri River Basin states as they address mainstem reservoir operations. It is our desire to participate and contribute in any revisions to the Corp of Engineers' "Master Manual" or other policy determinations of the governors respecting the use of the Missouri River.

The Oglala Sioux Tribe urges that proper consideration be given to the Winters Doctrine rights to the use of water in the Missouri River and its tributaries. The Oglala Sioux Tribe possesses valuable property rights in the White River and Cheyenne River that flow across, traverse or border upon the Pine Ridge Indian Reservation en route to the Missouri River. The water quality and dependability of those Missouri River Basin streams have been so seriously diminished that the Oglala Sioux Tribe cannot rely upon those sources for drinking water. The streams, nevertheless, remain valuable to the Tribe for irrigation, commercial, industrial, livestock, fish and wildlife, recreational and other purposes.

Because the surface water and groundwater sources within the Pine Ridge Indian Reservation are inadequate for the purposes of providing safe drinking water, Congress enacted the Mni Wiconi Project Act (PL 100-516) for the purpose of bringing water of suitable quality from the Mainstem Missouri River (at Oahe Dam) to the Pine Ridge Indian Reservation. Over 75 percent of the federal investment in the project will benefit the Pine Ridge Indian Reservation. The balance of the federal investment in the project (25 percent) will benefit the West River and Lyman-Jones Rural Water Users in west central South Dakota.



At the Pine Ridge Indian Reservation, our concerns are several. First, preservation of the water quality of the Missouri River above Sioux City, Iowa, is essential. Due to the drought years that have left the Missouri River Mainstem reservoirs depleted, we are concerned that the significant improvements in water quality that we are expecting for drinking purposes from the Missouri River will be diminished by normal levels of release of water from the reservoirs, primarily for hydro-power generation and navigation in both the Missouri and Mississippi rivers. While long term degradation of the Missouri River seems remote at present, it is imperative that the Indian tribes and states ensure preservation of water quality.

Second, the tribes Winters Doctrine rights to the use of water in the Missouri River and its tributaries have been systematically suppressed, ignored and denigrated in all federal and state planning of the Missouri River operation and regulation. At Pine Ridge our Winters Doctrine water rights extend to the surface water sources and available groundwater, including the Oglala and Madison aquifers. In addition to our Winters Doctrine rights for industrial, commercial, recreation, domestic, municipal, livestock and other purposes, there are 670,550 acres of irrigable land within the Pine Ridge Indian Reservation which in Indian, tribal or private ownership. Water requirements for those irrigable lands are considerable and must be considered, along with the other purposes cited here, in any planning effecting the future operation of the river.

It is recognized by the Oglala Sioux Tribe and other tribes in the Missouri River Basin that commitments of Missouri River water exceed the natural flows. Over 14 million acre-feet annually are required below Sioux City, Iowa, to satisfy navigation demands in the Missouri River. Within the last decade, the regulation capabilities of the Missouri River have been considered a means to supplement the inadequate streamflows of the Mississippi River for purposes of enhancing navigation. Corp of Engineers estimates of municipal demands downstream from Sioux City total over 4 million acre-feet annually. Releases of water below Sioux City for maintenance of water quality total approximately 750,000 acre-feet annually. While these downstream demands are not necessarily additive, it is without question that the cumulative downstream demand totals as much as 17 million acre-feet annually.

Recognizing that the annual flow of the Missouri River at Sioux City, Iowa, is no more than 28.4 million acre-feet annually, it is clear that water available for depletion in the Upper Basin is limited. At present Upper Basin consumes between 5 and 10 million acre-feet annually, and no provision has been made by the states or the United States, trustee for the Indian Tribes, to accommodate the tribes present and future rights to the use of water pursuant to the Winters Doctrine.

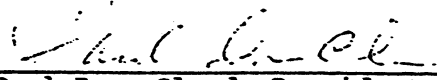
At Pine Ridge and Rosebud, the Sioux Tribes are engaged in contracts with the United States to investigate the acquisition of "preference" power produced by the federal generators at the six mainstem dams of the Missouri River. Not only have the tribes Winters Doctrine water rights been suppressed, the tribes have not participated in the low-cost federal energy produced at the dams. The tribes are "preference" entities entitled to low-cost federal power. Ironically, however, most tribes of the Missouri River Basin are paying the highest electrical rates if basin residents. This is due to the fact that the Rural Electrical Cooperatives serving the reservations obtain relatively small percentages of federal energy and relatively high percentages of energy produced by the costly coal-fired generators with which the Rural Electrical Cooperatives have exclusive contracts.

It is manifest that a re-allocation of federal energy is needed to more appropriately address the need for low-cost federal energy on the Indian Reservations where economic development is most needed to relieve unemployment and inadequate earnings.

The Indian Tribes of the Missouri River Basin have joined historically in loose-knit coalitions. The Oglala Sioux Tribe would welcome the opportunity to participate in a renewed coalition of Indian tribes to address our rights, title and interest in the Missouri River Basin and its tributaries. Irrespective of the organizational structure, it is necessary that the tribes' interest be properly represented and reflected in the "Master Manual" revisions for the Missouri River.

In this period of drought, the states and federal agencies limit their attention to the impacts of reduced water for navigation, reduced hydro-power generation and lower water levels that impact upon reservoir recreation along the Missouri River. The treaties with the Sioux and other Indians in the Missouri River Basin that resulted in grants of large tracts of land from the tribes to the United States, are essentially forgotten. Valuable rights are nevertheless retained. The Oglala Sioux Tribe and other tribes will seek to exercise their inherent sovereign powers to administer and use their valuable property rights in the Missouri River and its tributaries.

Sincerely,

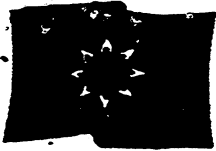


Paul Iron Cloud, President
Oglala Sioux Tribe

cc: Governor Mickelson

Tribal Correspondence 1992





Oglala Sioux Tribe Rural Water Supply System

Telephone (605) 867-5488
P.O. Box 415
Pine Ridge, South Dakota 57770



June 11, 1992

Colonel John Schaufelberger, Chief
U.S. Army Corps of Engineers
Omaha, NE

Dear Colonel Schaufelberger:

It was our understanding from the Missouri River Basin Tribal Conference in Lakewood on June 9, 1992, that the Corps will analyze the effect of present and future water requirements of the 26 Missouri River Basin tribes in the Corps' analysis of alternatives in its Master Manual revision. We understood that if each of the 26 Missouri River Basin tribes will submit their determination of present and future water requirements for beneficial purposes, (reserved pursuant to the Winters doctrine) the Corps will incorporate those water requirements into its analysis of the impacts of alternatives on the operation of the Missouri River.

Should the Tribal Councils decide that the Tribes' estimates will be submitted to the Corps, the estimates will not represent a quantification of water rights by the Tribe, but tribes of the Basin have reserved Winters doctrine water rights. As circumstances change, the Tribes may identify water requirements other than those submitted.

Please correspond for the purpose of confirming our understanding of the Corps willingness to proceed as outlined above.

Sincerely,

Paul Little, President
Mni Sose Coalition

PL/lk

cc: Tony Iron Shell
Frank Means
Standing Rock
Rosebud
Santee
Yankton
Omaha

Tribal Correspondence 1993



Missouri River Master Water Control Manual Review & Update

Executive Summary

of the

Preliminary Draft Environmental Impact Statement

May 14, 1993

Introduction

The Missouri River Mainstem System consists of six dams and reservoirs located in Montana, North Dakota, South Dakota, and Nebraska, and the Missouri River Navigation and Bank Stabilization Project from Sioux City, Iowa to the mouth at St. Louis, Missouri. The six mainstem dams are Fort Peck, Garrison, Oahe, Big Bend, Fort Randall, and Gavins Point. The six mainstem dams form six major reservoirs on the Missouri River: Fort Peck Lake, Lake Sakakawea, Lake Oahe, Lake Sharpe, Lake Francis Case, and Lewis and Clark Lake. Construction of the mainstem dams was completed in 1964. The system first filled to normal operating level in 1967. The Missouri River Master Water Control Manual (Master Manual) for the operation of the Mainstem System was first published in December 1960. The Master Manual was revised in 1973, 1975, and 1979.

The impacts associated with the current drought in the upper Missouri River basin prompted numerous inquiries from the public, State and Federal agencies, private companies, publicly and privately owned utilities, and Congressional interests regarding the operation of the Mainstem System. In response, the Corps initiated a review of the current Master Manual in November 1989 to determine if the current Water Control Plan described in the Master Manual is the plan that best meets the contemporary needs of the Missouri River Basin. The review has taken the form of a study called the Missouri River Master Water Control Manual Review and Update (Study).

The Study consists of technical studies; alternatives development; and economic, environmental, and social impact assessments. It includes all environmental studies and public and agency involvement required by the National Environmental Policy Act (NEPA) and the related Council on Environmental Quality (CEQ) regulations implementing NEPA.

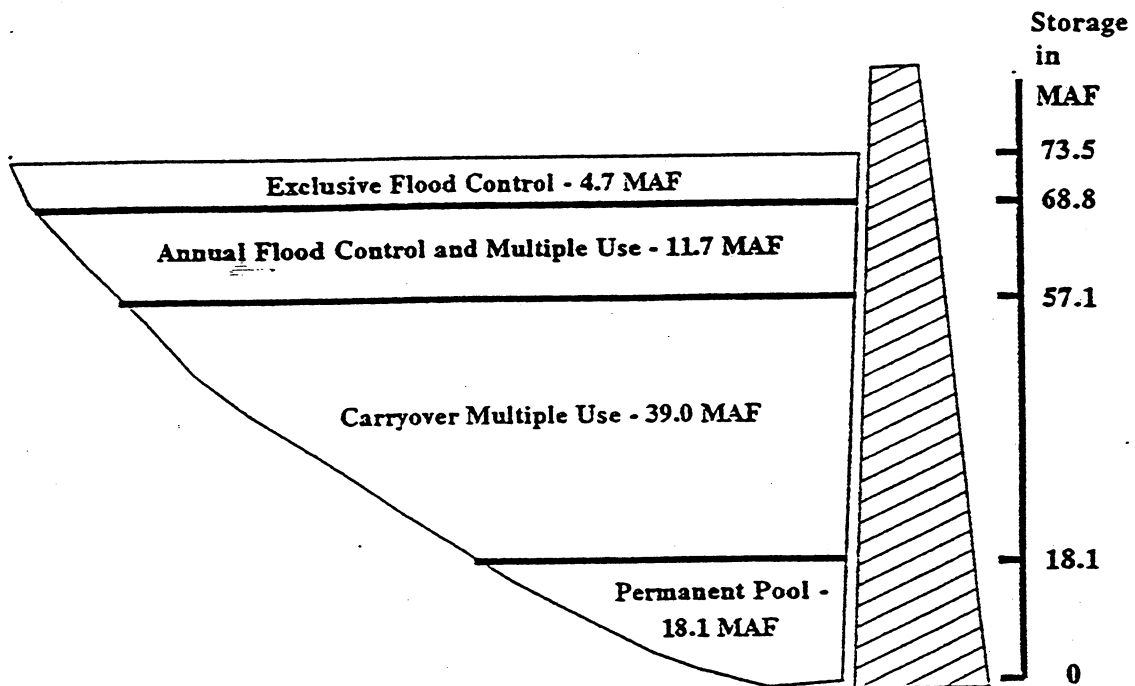
Current Water Control Plan and Alternatives

Current Water Control Plan - The existing Master Manual prescribes operation of the reservoir system for the multiple project purposes of flood control, hydropower, water supply, water quality, irrigation, navigation, recreation, and fish and wildlife. Criteria for operations include how reservoir storage is divided and how water is released from reservoirs during navigation and nonnavigation seasons. The current division of the total Mainstem Reservoir System storage of 73.5 million acre-feet (MAF) is shown in Figure 1.

The largest portion of the system storage capacity, 53 percent, is designated for carryover multiple uses. Most of the carryover multiple use storage exists behind Fort Peck Dam, Garrison Dam, and Oahe Dam. Fort Randall Dam has a relatively small carryover multiple use zone, and Big Bend and Gavins Point Dams have no carryover multiple use zones. The water in the system carryover multiple use zone is designed to provide for all uses during drought periods. This zone is operated so that it remains full

Figure 1

Missouri River Mainstem Storage Allocations



during periods of normal inflow, but is gradually drawn down during drought periods. Releases from this zone during drought periods are a major concern of the Study.

The Master Manual provides criteria for releases from the carryover multiple use zone for navigation service level, navigation season length, and nonnavigation service level from the system. Each criterion relates to the amount of water in system storage. The criteria were designed so that, as the amount of water stored in the system is reduced during an extended drought, more stringent cutbacks in system releases are made to conserve water. The criteria were designed so that the water in the carryover multiple use zone would be completely used if the drought of the 1930s were repeated.

Support for navigation on the Missouri River below Sioux City is provided by the release of water from the Mainstem Reservoir System. At Sioux City, flows of 25 to 31 thousand cubic feet per second (kcfs) result in channel depths of approximately 8 and 9 feet, respectively, in the navigation channel. Most of the water needed to maintain these flows is released from Gavins Point Dam because there is little inflow to the river between the dam and Sioux City. At Kansas City, 35 to 41 kcfs is necessary to provide 8 to 9 feet, respectively, of navigation channel depth; however, flow in the Missouri River at Kansas City is greatly augmented by the flow from major tributaries including the Platte and Kansas Rivers.

Corresponding flows at Omaha, Nebraska, and Nebraska City, Nebraska, are 25 to 31 and 31 to 37 kcfs, respectively.

The navigation season length is also determined based on the amount of water in storage. A full-length season, 8 months (March 23 to November 22 at Sioux City; April 1 through December 1 at St. Louis), is supported by system releases if water in storage is 41 MAF or more on July 1. From 41 to 25 MAF, the navigation season is shortened progressively from November 22 to September 7, depending on the amount of water in storage. If there is 25 MAF or less in storage, then system releases support a minimum season of 5.5 months (March 23 to September 7 at Sioux City). As system water in storage approaches the permanent pool level of 18 MAF, navigation support would be suspended.

The winter nonnavigation target release is also determined based on water in system storage. The current Water Control Plan specifies that if water in system storage is 58 MAF or higher on September 1, then 16 kcfs is released from Gavins Point Dam for the lower river. If there is 43 MAF or less, 12 kcfs is released. Between the two levels the release is prorated proportionally.

The current Water Control Plan specifies a minimum flow of 9 kcfs from spring through fall to provide water for intakes below the reservoir system when water in system storage is not sufficient to provide navigation flows.

Alternative Water Control Plans - The search for a water control plan that best serves the contemporary uses of the Mainstem System has focused on two primary features of the Master Manual:

1. The amount of system storage set aside for the permanent pool and the resulting size of the carryover multiple use zone; and
2. The multipurpose regulation of releases for various needs (e.g., navigation, water supply, irrigation, power production, water quality, flood control, recreation, and environmental quality).

The exclusive and annual flood control storage zones criteria were reviewed, and it was determined that these should not be changed. The sizes of the exclusive and annual flood control zones are based on storage requirements for major flood events, the height of the dams, and the elevation and capacity of the spillways. None of these factors have changed; therefore, the size of the flood control storage zones must be maintained to preserve the overall integrity of the system to control major floods. Where the plan could be changed is in the apportionment of the remaining 57.1 MAF comprising the carryover multiple use zone and the permanent pool.

Changes to releases to support various needs were also considered in developing new alternatives, including the following:

- Changes in the navigation criteria for service level and season length;
- Changes in minimum release targets downstream from Gavins Point Dam during nonnavigation periods;
- Changes in Gavins Point spring and summer releases to improve the Missouri River ecosystem.

- Modifying intrasystem regulation to draw down and fill the upper three reservoirs over a cycle of 3 years to provide better conditions for fish reproduction in the river below each dam and in each reservoir; and
- Changes in restrictions on spring and summer releases of water to protect threatened and endangered birds that nest on river islands.

Numerous alternative water control plans were identified during the Study. From the available possible array, two groups were developed for evaluation: a group designed to improve National Economic Development economics (NED alternatives), and a group designed to improve Environmental Quality (EQ alternatives).

A set of 277 NED alternatives were identified for analysis. The navigation criteria used in the current Water Control Plan were modified for all 277 NED alternatives to reduce navigation service earlier in a drought. The goal was to save enough water in storage early in a drought so that all users could benefit from the conserved water. A modified intrasystem regulation was also applied to each of the 277 alternatives. The modified intrasystem regulation is designed to draw down and fill the upper three reservoirs over a cycle of 3 years to provide better conditions for fish reproduction in the river below each dam and in each reservoir. Six permanent pool levels were evaluated -- 18 MAF, 26 MAF, 31 MAF, 38 MAF, 44 MAF, and 48 MAF.

The following nonnavigation minimum flows for the winter, spring/fall, and summer seasons were evaluated: 9 kcfs, 12 kcfs, 15 kcfs, 18 kcfs, and 25 kcfs.

A set of 30 environmental alternatives were developed for analysis by varying permanent pools, differing lengths of no navigation support (0, 1, and 2 months), and with- and without-flood-control constraints. August is the month with no navigation support for alternatives with 1 month of no navigation support. August and September have no navigation support when 2 months have no navigation support. All EQ alternatives have the modified navigation criteria and the modified intrasystem regulation that were described for the NED alternatives.

The option of dropping navigation service targets at Sioux City and Omaha was evaluated separately as a means of saving water in system storage. Test runs of the reservoir simulation model indicated that there was little additional water savings without these targets; thus, this option was not further evaluated.

Description of Existing Environment

This section describes the Mainstem System and the environmental resources that are likely to be affected by changes in the Water Control Plan described in the Master Manual.

Sedimentation, Erosion, and Ice Processes - Changes in storage regimes and river flows could potentially lead to changes in sedimentation and erosion patterns, which in turn could affect storage and channel capacities, shoreline erosion, and flooding potential in areas affected. Agricultural lands, historic properties, recreational areas, and fish and wildlife habitat are potentially affected by sedimentation and erosion in lakes and river reaches.

The Missouri River and its tributaries flow through the highly erodible sediments. Sediments from upstream and tributary sources are deposited in the upper ends of the lakes. As a result, the channels below the dams are eroded as the clear water released from each dam picks up sediment and transports it downstream. This process results in a deepening and progressive armoring of the river bed. Armoring is

the gradual loss of finer particles from the sediment and the buildup of progressively larger sediment like gravel and cobbles.

Flow changes have led to less erosion of the banks and sandbars. Sediment deposits are extensive below the mouths of larger tributaries, because flows no longer are high enough to move the sediment downstream.

In winter, river flows below the dams may impact the formation and breakup of ice in the river. River ice formation is important primarily because it plays a factor in floods by reducing the channel's water-carrying capacity and backing water upstream of ice bridges. The formation of river ice also reduces flow downstream, potentially affecting downstream resources dependent on river flow (e.g., water supply intakes). River ice is more prevalent in the northern portion of the river, but still remains a factor in the lower river. Mainstem dam releases in winter are adjusted to take into account ice conditions.

The mainstem reservoirs act as catchment basins for the tremendous load of sediment carried by the Missouri River. Approximately 20 to 25 thousand acre-feet (KAF) of sediment enter each of the four largest reservoirs each year. Approximately 100 KAF enter the mainstem reservoirs annually. The loss of storage capacity to date is about 5 percent of the total system capacity. Sediment is deposited slightly below the prevailing pool level. Most of the loss to the permanent pools occurred during the filling period before 1965. Since then, the loss occurs primarily in the carryover multiple use zone. All six mainstem lakes have large deltas formed at their headwaters. These large sediment deposits continue to grow, although they are confined to the upper reaches of each reservoir or its tributary arms. Despite the high sediment loads, the useful life of the reservoirs is at least several hundred years due to their large volume.

Water Quality - Changes in storage regimes and river flows may lead to changes in water quality parameters such as water temperature, dissolved oxygen, suspended sediments (water clarity), water purity, and toxic chemicals. Water quality is important because Missouri River water is used extensively for water supply and is essential habitat for fish and wildlife. The water quality is generally good, and the reservoirs have had only minor problems. Water quality concerns are primarily due to diffuse contaminants; agricultural practices; mining, coal, and oil development; sewage treatment problems; and sediment and nutrient inputs to the lake.

Low dissolved oxygen concentrations are typically the result of impoundment or of reservoir operation. Operational controls to alleviate this problem are limited because the mainstem dams were not constructed with multiple level outlets. Low dissolved oxygen concentrations may result in an influx of metals such as iron and manganese from the bed sediments into the water column. These concentrations may be 10 to 1,000 times higher than normal concentrations and may result in detrimental effects to water users. Low in-lake oxygen concentrations can also result in releases which are detrimental to downstream fisheries.

Wetland and Riparian Vegetation - Water levels and flows affect abundance, distribution, and species composition of wetland and riparian vegetation. The Missouri River floodplain currently supports significant stands of riparian forest and includes numerous old channels that have been cut off from the river forming oxbow lakes. Within the active channel of some reaches, the process of erosion and deposition still creates islands, sandbars, chutes, and backwaters that support a variety of wetlands. Deltas have developed in the lakes associated with the six mainstem dams, supporting additional extensive wetland complexes. The wetlands along the river and in deltas serve many important functions: wildlife habitat (waterfowl, big game, furbearers, etc.), fish breeding and foraging habitat, nutrient/sediment trapping, flood control, and recreation. Riparian forests serve as important wildlife habitat, timber sources, wind shelters for residences, and locations for recreational activities.

Wildlife - The Missouri River creates and maintains important forest and wetland habitat for a wide diversity of wildlife including at least 60 species of mammals, 301 species of birds, and 52 species of reptiles and amphibians. Of these, 6 bird and 2 bat species occurring in the river valley are Federally

listed as threatened or endangered. Because much of the river's course traverses the arid Great Plains, where less than 5 percent of the land supports trees, the densities and distributions of many of these wildlife species depend on the forests and wetlands associated with the river.

The Mainstem System is within the central flyway in which millions of waterfowl migrate and breed. The Missouri River and its associated lakes and wetlands provide important migration stopover habitat and, in times of drought when habitat in the North and South Dakota prairie pothole region is limited, important breeding habitat. The river and its associated wetlands support approximately 61 species of shorebirds, wading birds, and waterbirds. All are dependent upon Missouri River hydrology for supplying sandbars, shorelines, and shallow water zones that meet nesting and foraging needs.

A variety of other wildlife, including upland game birds, furbearers, big game, raptors, bats, songbirds, cavity-nesting birds, reptiles, and amphibians, rely on Missouri River habitats that are tied to Missouri River hydrology. Upland game birds are especially dependent upon emergent wetlands and riparian forests. They also heavily use dense, weedy, herbaceous vegetation that establishes on exposed shoreline sediments in the three upper reservoirs when water levels are drawn down.

The principal big game species are white-tailed deer, which occur along the entire river, and mule deer, which occur primarily in Montana, North Dakota, and South Dakota. Both species forage, fawn, and seek winter cover in riparian and wetland vegetation. During drought years, deer feed on the vegetation established on sediments exposed by lowered reservoir levels. Bighorn sheep and elk occur on the Charles M. Russell National Wildlife Refuge near the upstream end of Fort Peck Lake. Although primarily an upland species, pronghorns occasionally extend into the Montana and Dakota portions of the Missouri River floodplain.

The Missouri River provides breeding habitat for three bird species Federally listed under the Endangered Species Act (ESA)--the endangered interior least tern and bald eagle, and the threatened piping plover. It also provides migration and wintering habitat for the endangered peregrine falcon and whooping crane. The river valley potentially provides habitat for the endangered Eskimo curlew, gray bat, and Indiana bat.

Least terns and piping plovers typically nest in colonies on riverine sandbars isolated by water. Their nesting habitat requirements are similar, usually consisting of river sandbars, islands, and lakeshore peninsulas, where access by mammalian predators is minimized and foraging habitat (shallow water for terns and shorelines for plovers) is nearby. Both species nest in shallow, inconspicuous depressions in dry, open, sandy areas with less than 30 percent vegetative cover and plant heights less than 1 foot.

Fish - Over 156 fish species have been documented in the Missouri River. These species include a wide variety of native species and numerous species that have been introduced into the reservoirs and riverine stretches of the river. The habitat types available and, correspondingly, the species composition of the Missouri River differ considerably between the riverine and reservoir segments. Because of the differences in species composition as well as the physical characteristics between the riverine reaches and the reservoirs, the mechanisms affecting fish production are also very different.

The most important sportfish in the riverine stretches are walleye, sauger, white bass, yellow perch, channel catfish, paddlefish, shovelnose sturgeon, and northern pike. Trout, salmon, and smallmouth bass are also targeted in many of the tailrace fisheries. Other common species in the river include carp, river carpsucker, shorthead redhorse, freshwater drum, and goldeye. Shortnose gar, gizzard shad, flathead chub, blue sucker, and several shiners are also common in some parts of the river.

Many native species are declining because of habitat changes and competition from introduced species. Shallow, low-velocity habitat in backwaters, side channels, oxbows, and tributary deltas are limited. Deep, slow-velocity habitat in the main channel, important to many larger fish, is declining. There are few pools and snags in the main channel.

One of three native species of sturgeon remain common in the river, the shovelnose sturgeon. Lake sturgeon is a candidate species for Federal listing under the ESA. The pallid sturgeon is now rare and is Federally listed as an endangered species.

The range of pallid sturgeon encompassed the middle and lower Mississippi River, the Missouri River, and the lower reaches of the Platte, Kansas, and Yellowstone Rivers. Because the pallid was not recognized as a distinct species until 1905, little is known about its abundance and distribution prior to this date. Subsequent fishery studies suggest a probable decline in pallid sturgeon abundance. According to the U.S. Fish and Wildlife Service's Pallid Sturgeon Recovery Plan, modification of the natural hydrograph, habitat loss, migration blockage, pollution, hybridization, and overharvest are probably all responsible for this decline.

The six reservoirs on the mainstem of the Missouri River contain a diverse community of coldwater, coolwater, and warmwater fish. The upper three reservoirs have been stocked with coldwater game and forage fish species to take advantage of the coldwater habitat that forms in the lower depths of the reservoirs. These species include chinook salmon, brown and rainbow trout, lake trout (Fort Peck Lake only), cisco (forage in Fort Peck Lake), and rainbow smelt. Species in the lower three reservoirs and in the warmer waters of the upper reservoirs include native and non-native species that have adapted to lacustrine conditions.

Flood Control - The Missouri River basin contains approximately 100 multipurpose reservoirs and over 1,200 single-purpose reservoirs, either completed or under construction. In the aggregate, these reservoirs provide over 106 MAF of multipurpose storage capacity. The six mainstem reservoirs contain 73.5 MAF of multipurpose storage capacity, which constitutes about 70 percent of the total multipurpose storage in the basin's 1,300-plus reservoirs. Purposes served by individual multipurpose reservoirs may include any combination of the following: flood control, municipal and industrial water supply, water quality control, irrigation, navigation, hydropower, fish and wildlife, and recreation. In contrast, the function of most single-purpose reservoirs is either flood control or water supply. The Corps is responsible for flood control regulation of all Federally financed reservoirs with allocated flood control space.

The objective of flood control is to regulate the mainstem lakes to prevent flows that originate above or within the system from contributing to damaging flows in the reaches downstream from the dams. Regulation of individual lakes is coordinated to prevent releases from contributing to damaging flows through the downstream reaches in which the particular lake affords a significant degree of control.

Water Supply - Water is withdrawn from the Missouri River and its mainstem reservoirs for cooling purposes in the production of electricity; municipal water supply; and commercial, industrial, irrigation, domestic, and public uses. More than 1,600 intakes and intake facilities have been identified on the reservoirs and river reaches of the Mainstem System.

Access to the water rather than quantity of water available is the main concern of the intake operators. In periods of average or above average rainfall, few problems are experienced because water levels are sufficiently high for all intakes. During below average rainfall or drought periods, low reservoir levels and low river flows have resulted in water availability problems at some intakes. Low flows and low pool levels also alter sediment deposition and sandbar formation, which may further restrict the flow of water to the intakes. During the winter, ice formation can further complicate water availability, particularly in the lower river reaches.

In addition to water access problems, water quality is also a concern. Low flows directly affect the ability of thermal powerplants to meet National Pollution Discharge Elimination System (NPDES) permit standards for discharging cooling water back into the river. During the summer months, toxic algae blooms could require shutdown of municipal intake facilities for a certain period of time, particularly

those located on the reservoirs. In addition, lower reservoir and river levels may affect the sediment content in water supplies.

Changes in river flows and reservoir pool elevations affect the cost of operating intake facilities. Low water levels may increase day-to-day operating costs, or in extreme cases, lead to capital costs for intake modification or location of an alternative water source, or even shutdowns.

Twenty-five electric generating stations, including coal- and nuclear-fired powerplants, are located on the Mainstem System to draw cooling water for their steam-electric generating processes. The powerplants have a gross electric generating capacity of 15,084 megawatts (MW). Seventy-four percent of this capacity is produced by powerplants in the river reaches below Gavins Point Dam. While most of the major powerplants are coal-fired, there are three nuclear powerplants located in the Omaha, Nebraska City, and Hermann, Missouri reaches. The nuclear powerplants have a combined generating capacity of 2,556 MW. Of the 25 powerplants, four (one nuclear) with a combined generating capacity of 3,634 MW, use cooling towers. The remainder use once-through cooling, which demands much more river water per unit of generating capacity.

Some powerplants have had problems with water access and thermal water quality standards compliance. Powerplants that use once-through heat rejection systems are required by law to meet NPDES permit requirements for discharging cooling water back into the river.

Missouri River water is also used for municipal and industrial uses. Municipal use is for public supply of water to residents of cities and towns and rural water districts or associations. Industrial use is for manufacturing or processing purposes other than powerplant use.

Numerous private irrigators withdraw water from the mainstem reservoirs and the river to increase crop yields or to grow crops that otherwise could not be grown in the area. Most are located in the upper basin where the annual rainfall is less and the growing season is shorter than in the lower basin. The majority of irrigation intakes are portable and are placed to access water at a low cost. However, adjusting intakes to changing water surface elevations requires costs in time and efficiency.

Rural domestic use includes lawn, tree, and small garden irrigation, stock watering, agricultural spraying, or other small agricultural uses in connection with domestic needs, and other domestic uses, excluding drinking water. Most domestic intakes serve one household, and many may be used only on a seasonal basis. The majority of the domestic intakes are portable and are located on the upper two reservoirs (Fort Peck Lake and Lake Sakakawea) and in the river reach below Fort Peck Dam. Many of the portable domestic intakes access water at a low cost because they are placed high in the reservoirs compared to the minimum operating pool. When the water surface elevation falls below that required for normal operation of the intake, owners have to move their pumps or extend their pipeline to continue intake operation.

Public intakes provide water for parks, golf courses, other recreational purposes, and fish and wildlife uses. Most public intakes are located in the mainstem reservoirs and river reaches above Gavins Point Dam. The operating season varies from intake to intake, but generally occurs either year round or within April through November. Insufficient water surface elevation may result in increased operation and maintenance costs. Additional costs related to fish and wildlife intakes could include increases in disease treatment costs, decreases in units of production, and decreases in acres irrigated. Capital costs could include intake extension, modification, or location of an alternative source. Some fish hatcheries could be forced to shut down during periods of low water levels.

Hydropower - At the six mainstem dams, there are 36 hydropower units with a combined capacity of 2,409 MW. These units provide an average of 10.0 million megawatt-hours (MWh) per year, or about 9 percent of the energy used in the Mid-Continent Area Power Pool (MAPP) region. The MAPP region includes all of Iowa, Minnesota, Nebraska, and North Dakota; most of South Dakota; and portions of

Illinois, Montana, and Wisconsin. Power generated at the Missouri River mainstem dams is marketed within the MAPP region by the Western Area Power Administration of the U.S. Department of Energy.

Nearly all of the water released from the reservoirs passes through hydropower turbines. Generally, flood waters in the upper Missouri River basin are stored in the reservoirs and used later for power generation. It is only during flood storage evacuation events that water must be passed through the emergency spillways, thus bypassing powerhouses. This occurs most often at the Gavins Point Dam, where water releases exceed the discharge capacity of the powerhouse about 25 percent of the time.

Recreation - The six large lakes of the Mainstem System and the reaches between and below these lakes provide recreation opportunities to residents of the States through which the river flows, as well as to those of neighboring States. Recreational activity is a source of income for businesses catering to boating, hunting, fishing, camping, and other recreational pursuits, as well as service establishments located near the river.

There are a variety of recreational opportunities on the Mainstem System. Water-based recreation includes boating, boating-related activities, and swimming. Sport fishing is a primary component of recreation along the entire system. The wetlands along the river corridor provide waterfowl habitat, and waterfowl hunting is popular. Hunting for small and large game such as squirrel, rabbit, and deer occurs on land along the reservoirs and river. The aesthetically pleasing character of the lakes and river reaches attract sightseers. Camping facilities vary from fully developed to primitive.

Navigation - The Missouri River Navigation and Bank Stabilization Project was designed to prevent bank erosion and meandering and to provide reliable navigation. This project, authorized by Congress in the River and Harbor Act of 1945, provided for a 9-foot-deep channel, 300 feet wide, from Sioux City to the mouth of the river at St. Louis, a distance of 735 miles. Construction of the navigation works was declared complete in September 1981, although corrective work will be required as the river continues to form its channel in response to changing flow conditions.

Navigation on the Missouri River is limited to the normal ice-free season, with a full-length season of 8 months. At Sioux City, the full-length season extends from March 23 to November 22. At St. Louis, the full length season extends from April 1 to December 1. When water supplies are above normal, a 10-day season extension is provided.

Major commodity groups transported on the Missouri River include farm products, food products, chemicals, petroleum products, building products, sand and gravel, and water materials used to maintain the bank stabilization and navigation channel. Commercial tonnage, which excludes sand and gravel and waterway materials, peaked in 1977 at 3.3 million tons and has generally declined since then. During 1984 through 1988, total tonnage transported via Missouri River navigation averaged 6.7 million tons per year and commercial tonnage averaged 2.5 million tons per year.

Socioeconomic - Seven States border the Missouri River from Fort Peck Lake to its confluence with the Mississippi River, and benefit directly from the presence of the river. These States are Montana, North Dakota, South Dakota, Nebraska, Iowa, Kansas, and Missouri. The Mainstem System is a valuable source of jobs, recreation, hydropower, transportation of goods, and water supply for powerplants and domestic, agricultural, and industrial uses. In addition, operation of the mainstem reservoirs affects flows in the Mississippi River and, therefore, could affect transportation and the economies of Illinois, Kentucky, Tennessee, Mississippi, Arkansas, and Louisiana.

Historic Properties - Historic properties include historic and prehistoric archaeological sites, historic architectural and engineering features and structures, and resources of traditional cultural or heritage significance to Native Americans and other social or cultural groups. Paleontological resources are fossils of prehistoric plants and animals. The National Historic Preservation Act (NHPA) and its implementing

regulations define responsibilities for managing cultural resources when a Federal agency considers an undertaking. Any undertaking that would affect sites, structures, or objects eligible for nomination to the National Register of Historic Places merits an analysis of the significance of the effect and potential avoidance or mitigation measures under the NHPA. The Antiquities Act of 1906 mandates that the Federal government protect significant fossil discoveries.

General Evaluation of Environmental Effects of Alternatives

This section describes the anticipated effects of the current Water Control Plan and 306 alternatives. The alternatives are compared in terms of economic and environmental performance. Economic value is compared for flood control, water supply, hydropower, recreation, and navigation. Environmental performance is compared for system hydrology, sedimentation and erosion, water quality, wetlands, fisheries, and wildlife impacts. Erosion of historic properties along the upper three mainstem lakes is also compared.

The first change considered in the Study was modifying the criteria for navigation season length and service level. By reducing service level and season length earlier in a drought, dam releases are reduced and water is conserved for future use. In the long run the more conservative criteria reduces the number of nonnavigation years within the 93-year simulation period and improves the overall NED benefits for navigation (\$0.2 million/year). Hydropower benefits also improve (\$3.2 million/year) because of the higher average lake levels. Changes to flood control, water supply, and recreation are slightly positive.

Reduced dam releases and higher lake levels in drought periods resulting from the modified navigation criteria lead to changes in environmental resources as well. Fish production and habitat improve in the upper three lakes in response to higher water levels during droughts. Lower summer and fall flows improve fish production in the lower three lakes. The amount of warmwater fish habitat increases below the upper three dams because of lower summer and fall flows. Higher storage levels allow coldwater fish habitat in the river below each of the upper three dams to be maintained at a higher level through drought periods. The physical habitat for native fish also benefits slightly during drought periods from reduced summer and fall flows. Wetlands in lake deltas would generally benefit from higher permanent pool levels. River riparian habitat benefits at the expense of wetland habitat because of lower summer and fall river flows. Lower summer river flows also benefit tern and plover nesting habitat. Higher permanent pool levels increase erosion of historical sites.

Overall, the benefits in economic and environmental value outweigh the negative effects. For this reason, the decision was made to recommend the more conservative navigation criteria.

Like the navigation service level and season length criteria, a decision was made to adopt a modified intrasystem regulation scheme for the upper three mainstem lakes to improve the overall fish production in the upper three lakes and fish habitat in their tailwaters. Promoting rising water levels in spring in at least one of the upper lakes each year would improve fish habitat, while having only a minimal effect on flows through the lower lakes and river reaches. In general, most resources benefit from this regime, while none are significantly negatively affected.

System release schedule is a key feature of the current Water Control Plan evaluated in the Study. Two basic schemes were evaluated: NED and EQ. The NED scheme is similar to that of the current Water Control Plan, while the EQ alternatives adopt a system release schedule that increases spring releases and reduces late summer releases to provide a more natural river flow regime. There are two different series within the EQ's, the EQ1 and EQ2, with the EQ1 releases not being constrained by flood control limitations and the EQ2 releases being constrained to minimize overbank flooding.

In general, the EQ alternatives provide substantially lower lake levels, higher spring and early summer river flows, and lower late summer and fall river flows than the NED scheme. The EQ1 series reduces average annual system storage substantially more than EQ2, while EQ2 maintains average annual storage more similar to the NED alternatives. Monthly average flows are highest in spring for the EQ1 series, followed by EQ2, and then by the NED series. The opposite pattern occurs in late summer.

The reduced average storage levels and higher spring and lower late summer river flows of the EQ alternatives lead to substantial reductions in economic value and improvements in environmental resources. The best economic performing EQ alternatives fall approximately \$20 million per year in benefits below the best performing NED alternatives. The tradeoff comes in higher resource value for the EQ scheme in (1) fish production in lakes; (2) coldwater reservoir fish habitat; (3) river warmwater fish habitat; (4) river fish physical habitat; and (5) total wetland habitat.

Between the EQ1 and EQ2 series, the EQ2 series is a substantially better economic performer with \$10 to \$20 million greater in total NED economic benefit per year and higher benefits in all five economic resource categories. The tradeoff in dollars again comes with environmental resources as the EQ1 series produces 7 to 18 percent higher average annual fish production in lakes, 7 percent less average annual coldwater fish habitat in lakes, 5 to 8 percent less average annual warmwater fish river habitat, 6 to 11 percent more wetland habitat, 6 to 7 percent less riparian habitat, 0 to 19 percent higher tern and plover nesting habitat, and 5 to 8 percent more stability for historical sites. There is little difference (<5 percent) between the two in terms of river physical fish habitat or river coldwater fish habitat.

Among the EQ alternatives is the option for 0, 1, or 2 months of no navigation in the middle of the navigation season to replicate a natural hydrograph. In general, the split season reduces total economic benefits from lower navigation, water supply, hydropower, flood control, and recreation value by \$4 to \$40 million per year for the 2-month no-navigation split. The tradeoff in environmental value is small, with the greater length of split season (2 months) reducing young fish production 0 to 6 percent, increasing coldwater lake fish habitat 5 to 10 percent, increasing coldwater river fish habitat slightly (<5 percent), decreasing warmwater river habitat slightly (<5 percent), increasing river physical fish habitat slightly (<5 percent), increasing tern and plover habitat 3 to 10 percent, and decreasing historical site protection by 2 to 6 percent. There was little difference in wetland and riparian habitat.

Among the NED and EQ alternatives, raising the permanent pool has little effect on total economic benefits, except economic benefits decline slightly for many NED alternatives at the 44 and 48 MAF permanent pools. However, some alternatives with the higher permanent pools show greater benefits than similar alternatives with lower permanent pools. Changing from the 18 MAF permanent pool to the 44 or 48 MAF permanent pool results in NED benefits shifts of less than \$5 million per year or less than 1 percent of the total annual economic benefit. Navigation is most negatively affected with a decline in benefits of about 75 percent following extended droughts.

In terms of environmental value, raising the permanent pool among the NED and EQ alternatives markedly improves some environmental resources while causing decreases in others. Average annual young fish production and coldwater fish habitat in lakes improve approximately 10 to 15 percent when the permanent pool is increased from 18 to 48 MAF, with most of the improvement occurring during extended droughts. (Higher pools actually retain normal value during droughts rather than let the value decline 50 to 100 percent.) Average annual coldwater river fish habitat increases about 5 percent with higher permanent pools; again, the difference occurs in drought periods. Warmwater fish habitat in rivers declines 10 to 15 percent with higher permanent pools; however, in this case habitat increases above normal in droughts. Higher permanent pools result in only a slight decline (<5 percent) in physical habitat of river fish, with most of the decline occurring during droughts (10 to 20 percent decline from normal value). For wetlands there is a mixed reaction to higher permanent pools; however, for many NED alternatives there are predicted declines of up to 10 to 20 percent during droughts with higher permanent pools. In many cases there is a similar decline in riparian habitat with higher permanent pools. There is a mixed reaction to increasing permanent pools for tern and plover nesting habitat; but in

general, higher permanent pools improve habitat substantially during drought periods. Higher permanent pools reduce protection of historical sites about 5 percent, with most of the change occurring in the form of less improvement in protection during drought periods.

Among the NED alternatives, winter, spring/fall, and summer nonnavigation service levels affect system releases and the amount of water in system storage during drought periods. In general, higher minimum nonnavigation season flows reduce average system water in storage levels and increase average seasonal releases from dams, especially in drought periods.

Higher nonnavigation service levels (releases from Gavins Point Dam) generally lead to a reduction in average annual NED economic benefits over the 93-year simulation period. The only major exception to this pattern is the 9 kcfs minimum winter release which has the lowest NED economic value due to very low water supply benefits.

Environmental resource values vary in response to changes in storage and river flows from changing nonnavigation service levels. Young fish production in lakes falls in average value approximately 8 percent across the range of nonnavigation service levels studied. Coldwater lake habitat declines only 3 percent across this range. Coldwater river habitat declines with higher winter and spring/fall service levels slightly (<1 percent) and increase slightly (<1 percent) with high summer service levels over the range of alternatives. Warmwater river habitat has the opposite pattern to coldwater river habitat. Physical river fish habitat improves about 5 percent over the same range of alternatives, with most of the change due to winter and spring/fall service level changes. Wetland and riparian value varies little (<2 percent) over the range of seasonal nonnavigation service levels. Tern and plover nesting habitat increases slightly (<2 percent) with higher spring/fall flows, decreases 5 percent with higher winter flows, and varies slightly up and down in value in response for summer service levels depending on permanent pool, and spring/fall and winter nonnavigation service level. Historical site stability increases on average about 5 percent over the range of nonnavigation service levels studied.

Detailed Evaluation of Environmental Effects of Seven Alternatives

This section describes the anticipated effects associated with the seven alternatives subjected to a more-detailed evaluation. It concludes with a comparative analysis of these effects. The use of average annual values for the entire 93-year simulation period can obscure the impact on a particular resource or use. Because much of the difference in impacts occurs during drought periods, this section presents discussion of impacts during the major drought and subsequent recovery period (1930 through 1950).

Total NED benefits and EQ resource values do not vary much by changes in permanent pool, so an analysis of the flow series was conducted to identify these alternatives. The flow series that maximizes the NED benefits across all permanent pools is the flow series with a minimum of 12 kcfs in the winter, 9 kcfs in the nonnavigation spring/fall, 25 kcfs in a nonnavigation summer, modified navigation service criteria, and modified intrasystem regulation criteria. Past operational experience on the Mainstem System has shown that a winter minimum flow target of 12 kcfs is reasonable, because it provides adequate water supply to the water intakes on the river from Gavins Point Dam to St. Louis. Also, experience has shown that a nonnavigation spring/fall flow target of 9 kcfs is adequate. There is no corresponding experience with a nonnavigation summer release, because none has occurred since the system became operational. The current Water Control Plan, which is based on this operational experience, has a flow series of 12 kcfs in the winter, and 9 kcfs in the spring/fall and summer. Because the flow series with a minimum of 12 kcfs in the winter, 9 kcfs in the nonnavigation spring/fall, 25 kcfs in a nonnavigation summer, modified navigation service criteria, and modified intrasystem regulation criteria maximizes the NED benefits across all permanent pool levels, and past operational experience reinforces that conclusion, it was chosen as the NED flow series for detailed evaluation.

A process to identify a flow series for the EQ alternatives was also conducted. In the final formulation of the 307 alternatives, special emphasis was given to improve conditions for reservoir fisheries, wetlands, and tern and plover habitat above the current Water Control Plan. The current Water Control Plan represents conditions that satisfy ESA requirements for terns and plovers as outlined in a biological opinion issued by the U.S. Fish and Wildlife Service. It was therefore reasoned that any alternative that improves habitat conditions above the current Water Control Plan would be adequate to satisfy tern and plover requirements. All the alternatives, except some of the EQ1 series, improve conditions for all of the aforementioned resources above the current Water Control Plan. Therefore, these resources were not included in the criteria for choosing the EQ flow series for detailed evaluation.

The river physical habitat and river warmwater values represent effects to the native river fish community which includes the Federally listed pallid sturgeon and a number of Federal candidate species that have good potential to be listed in the future. The current Water Control Plan has not undergone ESA compliance for the pallid sturgeon but is thought to be inadequate in satisfying pallid sturgeon requirements under the ESA. Therefore, improvement in these values was considered especially critical in choosing the EQ flow series for detailed evaluation.

The river warmwater value function is not very discriminating among the alternatives because river temperature is more dependent on structural outlet configuration at the dam than on permanent pool and release changes. Therefore, it was decided to choose the flow series that maximized river physical habitat across all permanent pool levels. An EQ1 flow series with 2 summer months of no navigation support provided the greatest physical habitat value. Use of this flow series, however, resulted in unacceptable levels of flood damage because the EQ1 alternatives do not have downstream flood control constraints. Flood control was therefore included in the criteria by identifying the flow series that maximized the sum of river physical habitat values and flood control benefits across permanent pool levels. Using this criteria, the EQ2 flow series was chosen which also, unlike the EQ1 flow series, improves reservoir coldwater habitat. The use of the NED and EQ flow series provides a good basis for presenting critical resource compatibilities and conflicts.

Selection of the permanent pool levels shown for the NED and EQ flow series was somewhat simpler. It was determined that the 44-MAF permanent pool series generally provided better NED benefits than the 48-MAF permanent pool series counterparts. Also, the chosen NED and EQ flow series could not be used in the reservoir simulation without drawing total system water in storage below the 48-MAF permanent pool level during the drought of the 1930s. Therefore, the 18-MAF, 31-MAF, and 44-MAF permanent pool series were chosen to represent the effects of the range of permanent pool levels being considered. This decision results in six alternatives: three NED alternatives and three EQ alternatives. The seventh alternative selected for detailed discussion is the current Water Control Plan, which is included for comparison purposes.

The alternatives affect the many resources differently than the current Water Control Plan. These differences are a result of a change in flow series and changes in permanent pool levels.

For the 93-year simulation period, the NED flow series has the largest effect on tern and plover habitat (+41 percent). Smaller positive differences occur for young-of-year fish production (+13 percent), reservoir coldwater habitat (+9 percent), and wetland habitat (+8 percent). Even smaller negative differences occur for historic properties (-6 percent) and riparian habitat (-4 percent). The differences for the riverine fisheries categories -- river coldwater habitat, river warmwater habitat, and river physical habitat -- are 2 percent and less for a change to the NED series while staying at the 18-MAF permanent pool.

Raising the permanent pool above 18 MAF for the NED series does not result in much greater differences for the environmental resources over the 93-year period. For a 31-MAF permanent pool, the differences from the current Water Control Plan are within 3 percent of the differences for the 18-MAF permanent

pool. For the 44-MAF permanent pool, the differences are no more than 10 percent higher, with five of the nine resources being no more than 5 percent greater.

The NED flow series follows the same trends for the 21-year simulation period of the 1930s drought and subsequent recovery period as they did for the 93-year simulation period. The differences however are more pronounced for two of the resources -- tern and plover habitat (+71 percent) and reservoir coldwater habitat (+27 percent).

Again, the 21-year drought simulation period percentage values are somewhat larger for the higher permanent pool alternatives. Increasing the permanent pool to 31 MAF for the NED series does not result in much change in the differences except for reservoir coldwater habitat (+45 percent) and river warmwater habitat (-10 percent). All of the other differences are within 7 percent of the values for the 18-MAF permanent pool.

Increasing the permanent pool to 44 MAF significantly improves tern and plover habitat, which increases to 128 percent over the current Water Control Plan. Reservoir coldwater habitat for the 44-MAF permanent pool improves to +91 percent greater than the current Water Control Plan. Two resources experience substantial negative changes with increase in permanent pool to 44 MAF. River warmwater habitat decreases to a -30 percent difference, and historic properties decrease to a difference of -24 percent over the 21-year simulation period.

For the 93-year simulation period, the alternatives of the EQ flow series result in differences from the current Water Control Plan that somewhat vary from those described for the NED flow series. The differences do not change much among the various permanent pool levels. The greatest differences occur for tern and plover habitat, which has differences in the low to mid +30s at all permanent pools. Smaller positive differences occur for reservoir coldwater habitat (+11 to +24 percent), young-of-year fish production (+11 to +21 percent), river physical habitat (+12 percent for all three), and wetland habitat (+5 to +10 percent). Small negative differences occur for all three EQ alternatives for riparian habitat (-14 to -17 percent) and historic properties (-3 to -13 percent). Differences for the other two resources (river coldwater, -4 to +2 and river warmwater, +6 to -8) vary from positive to negative, depending on the permanent pool level.

The most important percentage difference among all of the environmental resource values for the 93-year simulation period is the 12 percent for river physical habitat. The NED series provided essentially no improvement to this resource category, which measures effects to the physical habitat of the native riverine fish community. This community includes the endangered pallid sturgeon and other species that are candidates for Federal listing.

Differences between the EQ alternatives and the current Water Control Plan for the average annual total environmental resource values are more noticeable for the 21-year drought simulation period. Both tern and plover habitat (+68 to +93 percent) and reservoir coldwater habitat (+41 to +127 percent) are the greatest benefactors of the change in the operational plan. Young-of-year fish production benefits increase dramatically during this stress period with increased permanent pool (+6 to +46 percent). Wetland habitat (+4 to +16 percent) and river physical habitat (+7 or +8 percent) benefit under all three EQ alternatives. Riparian habitat (-16 or -17 percent), river warmwater habitat (-2 to -33 percent), and historic properties (-7 to -30 percent) are adversely affected by the alternatives of the EQ flow series. Initially, river coldwater habitat (-3 percent for 18-MAF permanent pool) is adversely affected; however, increased permanent pools improve this habitat (+5 for 31 MAF and +15 for 44 MAF).

For the 21-year drought simulation period, the EQ alternatives are the only ones that noticeably improve river physical habitat substantially, as was the case for the 93-year simulation period.

An alternative was formulated to simulate constant pool levels in the six mainstem reservoirs and natural flows in the river reaches. Comparison of the average annual total resource values of this constant pool

level alternative to the seven alternatives provides some insight as to how close the values for the seven alternatives compare to those for natural flow conditions. It also provides perspective on the magnitude of potential maximum changes to the various environmental resources.

Tern and plover habitat values under the seven alternatives (-62 to -74 percent) are significantly less than the values for the constant pool level alternative. Wetland habitat (-14 to -22 percent), river warmwater habitat (-11 to -23 percent), and river physical habitat (-7 to -17 percent) are less under all of the seven alternatives. This result makes sense because altering the natural flows has adversely affected the native river ecosystem. Riparian habitat (+20 to +44 percent) and river coldwater habitat (+4 to +11 percent) are positively affected by the seven alternatives. Again, this makes sense because alteration of the natural flows has positively affected riparian habitat and provided river coldwater habitat for artificially propagated species. A mixture of positive and negative differences occur for young-of-year fish production, reservoir coldwater habitat, and historic properties. This also makes sense because changes in these values are affected by changes in permanent pool levels and not river flow.

During the 93-year simulation period, total NED value was essentially unaffected by increasing the permanent pools among the three NED alternatives. Only one of the use categories is affected by more than 4 percent, and that is navigation. The differences in effects ranged from +1 percent for the 18-MAF permanent pool to -43 percent for the 44-MAF permanent pool.

Differences during the 21-year drought simulation period are greater than during the 93-year period. Navigation continues to be affected the most with a change in benefits as great as -72 percent, as compared to the benefits of the current Water Control Plan. As during the 93-year simulation period, the navigation NED benefits are greater (+5 percent) for the 18-MAF permanent pool alternative than for the current Water Control Plan. Hydropower (up to +9 percent) and recreation (up to +22 percent) are noticeably improved for the NED alternatives with higher permanent pools. Total NED differences are not very large for the alternatives, ranging from +2 percent for the 18-MAF permanent pool alternative to +4 percent improvement for the 44-MAF permanent pool alternative during the 21-year drought simulation period.

Operation of the Mainstem System under the EQ alternatives results in a loss of total NED benefits over the 93-year simulation period. The difference from the total NED benefits of the current Water Control Plan is only -1 to -2 percent, with the difference being lower with a higher permanent pool. Even though the percentage difference is low, the actual difference is substantial for the three EQ alternatives. This difference ranges from \$17 million per year for the 44-MAF permanent pool alternative to \$20 million per year for the 18-MAF permanent pool alternative.

Navigation again receives the most losses with a change from the current Water Control Plan. The differences for the 93-year simulation period range from -39 percent for the 18-MAF permanent pool alternative to -62 percent for the 44-MAF permanent pool alternative. Flood control (-5 to -8 percent) is the only other use category that differs by more than 3 percent over the 93-year simulation period.

The greatest portion of the average annual total NED benefits comes from hydropower (49 percent) and water supply (43 percent). Because these two uses are not affected by more than 2 percent, the total NED benefits are basically unaffected by a switch to the EQ alternatives during the 93-year simulation period, as indicated by the total dollar amounts and the percentage changes.

Differences in the total NED benefits among the EQ alternatives over the 21-year drought simulation period range from -2 percent for the 18-MAF permanent pool alternative to +1 percent for the 44-MAF permanent pool alternative. Even though the total NED benefits are basically unaffected by a change to the NED or EQ flow series, the navigation economic differences are again substantially affected (-56 to -78 percent) during the 1930s and 1940s by a change to the EQ flow series. Flood control (-7 to -11 percent) and recreation (+2 to +20 percent) are the two use categories that experience differences greater than 10 percent for the alternatives of the EQ flow series. Hydropower, however, experiences up to +9

percent difference and water supply -6 percent difference. The percentages are somewhat small; however, these two uses have the greatest portion of the total NED benefits (92 percent for the current Water Control Plan). These are also the two use categories that have differences in the +10 to -10 percent range during the 21-year drought simulation period. Because one difference is positive and one negative, the differences for these two use categories tend to cancel each other out, resulting in a relatively small change in total NED benefits for the alternatives of the EQ flow series.

An analysis was conducted to determine how much of the maximum of the average annual benefits for each use category of the array of 307 alternatives are lost by the seven alternatives during the 21-year drought simulation period. Average annual NED benefits data for the 93-year simulation period are available for the array of 307 alternatives. The maximum for each use category was identified from this array, and the 21-year average annual NED benefits for each use category were compared to these values to derive the percent reduction in benefits during this drought and subsequent recovery period.

Both positive and negative percent differences occur for the current Water Control Plan. Average annual flood control benefits increase (+18 percent) for the current Water Control Plan during the 21-year drought simulation period because there is a higher proportion of major floods during this period that are reduced by the mainstem reservoirs. Although there is 1 year (1937) without navigation, which results in increased water supply costs for mainstem thermal powerplants that year, and increased costs for reservoir intakes throughout the period, water supply benefits are essentially the same during this period as they were over the 93-year simulation period. This result occurs because capital improvement costs at the powerplants are not required during this period (capital improvement costs occurred in 1928). Average annual benefits for hydropower, recreation, and navigation are lower (-14, -19, and -36 percent, respectively) in the 21-year drought simulation period.

Changing to the NED flow series, the 18-MAF permanent pool alternative results in minor changes to the percentage differences. This is also the case for the 31-MAF permanent pool alternative except for navigation, which loses a larger portion (68 percent) of the maximum benefits during the 21-year drought simulation period. For the 44-MAF permanent pool alternative, navigation loses another 14 percent (total loss of 82 percent), and recreation gains another 8 percent (loss of 2 percent). The recreation gain to +2 percent is a recovery of 17 percent of the 19 percent difference for the current Water Control Plan.

The changes in permanent pool for the EQ flow series over the 21-year drought simulation period respond similarly to the same changes for the NED flow series for the same period. Notable differences occur for flood control (a loss of gained benefits from 7 to 9 percent as compared to the NED alternatives) for all three alternatives, water supply (6 percent greater loss of maximum benefits) for all three alternatives, and navigation for the 18-MAF and 31-MAF permanent pool alternatives (additional losses of 39 and 11 percent, respectively). There is no difference between the corresponding permanent pool alternatives for hydropower, and there is a very small difference for recreation.

Distribution of the total average annual direct regional economic development (RED) benefits among the seven States along the Mainstem System and to an "other" category (includes other States such as Wyoming and Minnesota) provides some insight on which States gain, lose, or experience no effect for each of the seven alternatives. Both simulation periods were selected for this comparative analysis because there are dramatically different total direct RED benefits through the drought of the 1930s and subsequent recovery period, as compared to the remainder of the 93-year simulation period.

Over the 93-year simulation period, many of the States experience differences in direct RED benefits of less than 0.5 percent from a change from the current Water Control Plan to an NED alternative. Four States and the other category experience virtually no difference in changing to the 18-MAF permanent pool NED alternative. Montana, North Dakota, and Iowa have a 1-percent increase for the change.

North Dakota and Montana direct RED benefits increase about 1 percent for an increase to the 31-MAF permanent pool. South Dakota and Nebraska continue to break essentially even, and they are joined by

Iowa. Kansas begins experiencing a measurable loss of 4 percent (only \$0.8 million per year over the 93-years). Missouri also experiences a loss, which, at only 1 percent, totals \$1.5 million.

Only Nebraska (-\$1.0 million) continues to experience essentially the same 93-year average annual direct RED benefits, based on percentage differences, for a raise to a 44-MAF permanent pool. Montana (+\$1.3 million), North Dakota (+\$5.2 million), and the other category (+\$2.8) gain another percent to +2 percent for this change. South Dakota (+\$3.3 million) joins the percentage gainers with +1 percent. Iowa (-\$2.4 million, -1 percent) now loses direct RED benefits, and the losses to Kansas (-\$1.9 million, -9 percent) and Missouri (-\$2.9 million, -2 percent) are greatest for the NED alternatives with the 44-MAF permanent pool.

Overall, total average annual RED benefits over the 93-year simulation period are essentially the same for all of the NED alternatives. This, however, is not the case for the 21-year drought simulation period. Total direct RED average annual benefits during this drought and subsequent recovery period improve by 2 to 3 percent for a change to the NED alternatives.

All but Missouri gain direct RED benefits over the 21-year drought simulation period with a change to the 18-MAF permanent pool NED alternative. The gains range from 1 to 5 percent.

The other category (+\$5.2 million, +6 percent) and Montana (+5.6 million, +7 percent), North Dakota (+\$18.1 million, +5 percent), and South Dakota (+\$13.5 million, +3 percent) experience even greater average annual gains over the 21-year drought simulation period for the 31-MAF permanent pool NED alternative. Nebraska continues to have a 2 percent gain (+\$10.2 million), and Iowa (+\$1.7 million, 1 percent) still has a gain. Kansas (-\$1.9 million, -9 percent) and Missouri (-\$2.7 million, -2 percent) begin to experience losses for this alternative.

The three upper basin States (Montana, +12 percent; North Dakota, +9 percent; and South Dakota, +6 percent) and the other category (+10 percent) have even greater gains for the 44-MAF permanent pool NED alternative. Nebraska continues to have a 2-percent gain; however, Iowa (-1 percent) joins Kansas (-21 percent) and Missouri (-3 percent) with losses of 1 percent or more. The losses range from \$2.4 million for Iowa to \$4.5 million for Missouri (Kansas loses \$4.3 million) for this alternative.

Total average annual direct RED benefits decline by 1 percent over the 93-year simulation period with a change to the EQ flow series. Increases in the permanent pool do not affect this percentage.

For the 18 MAF permanent pool EQ alternative, the 1-percent loss would be primarily distributed to Nebraska (-1 percent), Iowa (-5 percent), Kansas (-5 percent), and Missouri (-3 percent). The upstream States and the other category continue to have a difference of less than 0.5 percent.

Raising the permanent pool to 31 MAF provides a gain of 1 percent to Montana and North Dakota, essentially no change to South Dakota and the other category, and no increase to a minor increase (another 1 to 2 percent) in losses to the four States downstream from the mainstem reservoirs.

The three upper basin States and the other category gain another 1 percent for a change from the 31-MAF permanent pool alternative to the 44-MAF permanent pool alternative over the 93-year simulation period. Generally, three of the four lower basin States losses continue to grow, while Nebraska's losses remain at 2 percent.

The largest loss (-2 percent) of total average annual direct RED benefits occurs for the 18-MAF permanent pool EQ alternative during the 21-year drought simulation period. Even though the change in total direct RED benefits for the other two EQ alternatives is zero, the gains and losses among the States are larger over the more stressful 21-year drought simulation period.

The upper basin States' gains and the lower basin States' losses over the 21-year drought simulation period increase with permanent pool for the EQ alternatives. For the 44-MAF permanent pool alternative, the gains in the upper basin States total \$38.6 million and the losses in the lower basin States total \$47.3 million. North Dakota (+9 percent) is the largest gainer at \$19.3 million, and Iowa (-13 percent) is the largest loser at \$21.4 million. Most of North Dakota's gain is due to the increase in permanent pool, and most of Iowa's loss is with the change to the EQ flow series. In general, this relationship is the case for all of the States, with the exception of Kansas, which loses more average annual direct RED benefits due to the increase in permanent pool over the 21-year drought simulation period.

Maximum 93-year average annual direct RED benefits were identified for each State for the seven alternatives for comparative purposes. The 93-year maximum benefits are generally higher than the 21-year average values for the basin States, with the exception of Missouri. Because the greatest share of the direct RED benefits to Missouri are for flood control and water supply and both had higher values in the 21-year drought simulation period versus the 93-year simulation period, Missouri shows either a gain or no gain for all seven alternatives in the 21-year drought simulation period.

Operation under the current Water Control Plan through the 1930s and 1940s results in the greatest losses, as compared to potential maximum of the seven alternatives, to Montana (-16 percent), North Dakota (-11 percent), and South Dakota (-9 percent) and the other category (-15 percent). Smaller losses occur in Nebraska (-5 percent), Iowa, (-3 percent), and Kansas (-6 percent). Missouri experiences increased average annual benefits in this short period of 5 percent for operation under the current Water Control Plan.

Changing to the NED flow series either has no effect or very little effect on all of the States and the other category for the 18 MAF permanent pool alternative. A notable change occurs for Kansas (-5 percent for the 18 MAF permanent pool alternative, -15 percent for the 31 MAF permanent pool alternative, and -26 percent for the 44 MAF permanent pool alternative) as the permanent pool is increased. Generally, the upper basin States experience lower losses, Nebraska is relatively unaffected, and other lower basin States experience somewhat slightly increased losses over the 21-year drought simulation period as the permanent pool is increased for the NED alternatives.

The losses of average annual direct RED benefits for the EQ alternatives during the 21-year drought simulation period are very similar to those described for the NED alternatives. The most notable differences are for Nebraska and Iowa. These two States experience somewhat greater losses of maximum benefits for the EQ alternatives. These losses are about 4 percent greater for Nebraska and 12 percent higher for Iowa across all three permanent pool levels.

In general, it appears to make no difference in terms of flow series (NED versus EQ) for the upper basin States; whereas, there is a difference for three of the four lower basin States (except Kansas), particularly Iowa. All upper basin States experience decreased direct RED losses for increasing permanent pools, and the lower basin States experience increased direct RED losses for increasing permanent pools.

Mississippi River - Releases from Gavins Point Dam affect flows on the Mississippi River from St. Louis to its mouth. The effects are most pronounced from the mouth of the Missouri River at St. Louis to the mouth of the Ohio River at Cairo, Illinois. A change from the current Water Control Plan would cause little difference in average monthly Mississippi River flow at St. Louis for the 93-year simulation period. There are, however, critical low flow periods during which the Missouri contribution to Mississippi River flow can be critical to navigation.

One of the critical periods during the 93-year simulation period is October and November 1939. The value to Mississippi River navigation varies by about \$200 million in 1939 between the seven alternatives analyzed in detail. However, these critical periods are few in the 93-year period, and values averaged over

the entire period show little variance based on a percentage of the total value of Mississippi River navigation.

The addition of navigation targets for the Mississippi River at St. Louis was also investigated. Three levels of Mississippi River navigation target were added to each of the NED and EQ alternatives. The analysis showed that addition of these targets could alleviate some of the critical period Mississippi River navigation impacts. However, averaged over the entire 93-year simulation period, they would not result in large percentage change to the total Mississippi River navigation benefits.

Study Conclusions

This section describes the major conclusions of the Study and outlines the selection factors that will be used to determine a preferred alternative.

As previously stated, the purpose of this study is to determine if the current Water Control Plan best meets the contemporary needs of the Missouri River basin. Therefore, the current Water Control Plan was considered as the baseline for comparison of alternative water control plans. Study conclusions relate to changes in resource effects based on deviations from the current Water Control Plan.

The major decision variables in selecting a water control plan are flow series, either NED or EQ; permanent pool size; method of intrasystem regulation; and navigation service level criteria. Within the EQ flow series, additional decision variables are the amount of flood control constraints and the number of months of no navigation support during the summer.

From an economic perspective, the selection of flow series only affects economic impacts downstream from Gavins Point Dam. Selection of an EQ flow series does not substantially reduce total NED value; however, the split navigation season aspects of the EQ flow series severely reduces navigation benefits. Flood control and water supply benefits are reduced to a lesser extent. Either flow series does not reduce the amount of wetland habitat, and it is not substantially increased unless increased flooding is allowed. The EQ flow series substantially reduces the amount of riparian habitat. Tern and plover habitat is greater under the NED flow series. Young-of-year fish production and reservoir coldwater fish habitat are about the same with either flow series. River warmwater fish habitat is slightly improved and river coldwater fish habitat is reduced with the EQ flow series. Native fish physical habitat is substantially higher with the EQ flow series. The NED flow series provides reduced exposure of known historic properties to wave action.

Increasing the permanent pool size has little impact on total economic benefits. Hydropower and upstream recreation benefits are slightly improved with higher permanent pools, while navigation benefits are sharply reduced as permanent pools are increased. The net effect is a shifting of economic benefits from the downstream States to the upstream States as permanent pools are increased. This shifting of benefits is greater in times of severe drought. Increasing the permanent pool has little impact on young-of-year fish production, except in times of drought when higher permanent pools have better young-of-year production. Increasing permanent pools has little impact on native fish habitat, improves reservoir coldwater fish habitat, reduces river warmwater fish habitat, and improves river coldwater fish habitat. Wetland and riparian habitat are not substantially impacted by increasing permanent pool levels. Higher permanent pools subject historic properties along the upstream reservoirs to increased wave action.

Use of a modified scheme for intrasystem regulation improves most environmental and economic benefits. There is a slight reduction in flood control benefits, a small reduction in riparian habitat, and a small increase in exposure of historic properties to wave action. Otherwise, all benefits are improved by modifying the intrasystem regulation scheme.

Use of the more conservative navigation service level criteria improved economic and environmental benefits during drought periods. This criteria reduces the navigation service level earlier in a drought, conserves water in reservoir storage, and reduces the number of nonnavigation years.

Eliminating flood control constraints in the EQ flow series results in increased wetland habitat, better reservoir fish production, and a slight improvement in native fish physical habitat. Economic performance is substantially reduced when flood control constraints are eliminated.

Among the EQ alternatives is the option for 0, 1 or 2 months of no navigation support in the middle of the summer. Economic benefits are reduced slightly when the navigation season is split, with navigation and water supply benefits being impacted the most. Physical habitat for native fish is greatest with a 2-month split in the navigation season.

The total NED economic output of the system can be maintained within a few percentage points of maximum for a very broad range of alternatives. This range is broad enough that it does not appear to limit the consideration of any other factor. Because it does not constrain the preferences, total NED economic output is not likely to be a distinguishing factor in selecting the preferred plan.

There are many different and often competing resources within the EQ factor. Nine individual resources make up the EQ factor in this analysis. Although there are some differences and minor conflicts among these resources, over a long period they are quite compatible. The most important distinguishing feature is the improved physical habitat for native riverine fish species (including the endangered pallid sturgeon) provided by the EQ alternatives. This results in a preference, from an EQ standpoint, for the EQ alternatives over the NED alternatives and the current Water Control Plan at all permanent pool levels.

Even distribution of NED economic effects of drought among project uses is desired, if possible. Navigation receives the greatest percentage reduction in benefits during a drought. This is because navigation is a large water user and is affected the most by conservation measures during water shortages. Also, higher permanent pool alternatives provide less water for navigation and other riverine uses during droughts. Therefore, the current Water Control Plan and the NED alternatives with the smallest permanent pool provide the most even distribution of NED economic effects on a percent basis. The distribution becomes more unbalanced with the intermediate pool NED alternatives and the smallest permanent pool EQ alternatives. The distribution becomes extremely unbalanced for the NED alternatives with the larger permanent pool and the EQ alternatives with the intermediate and largest permanent pools.

It would also be desirable to distribute the RED economic effects of a drought evenly among the affected States. The most even RED economic distribution is provided by the smallest permanent pool EQ alternatives followed closely by the EQ alternatives with intermediate permanent pools and the NED alternatives with the largest permanent pools. Least preferable are the current Water Control Plan and the largest permanent pool EQ alternatives.

Three of the four plan selection factors are fairly compatible. Total NED economic output, environmental quality, and even RED economic geographical distribution appear reasonably well served by the EQ alternatives with the smallest and intermediate permanent pools. This preference is driven primarily by the improved physical habitat for native riverine fish species provided by the EQ alternatives. However, even distribution of NED economic effects of drought among the uses is not well served by the smallest and intermediate permanent pool EQ alternatives. These alternatives result in a considerable shift of the effects of drought from water supply, hydropower, and recreation to navigation. No alternatives have been identified that provide substantially improved physical habitat for native riverine fish species without shifting the effects of drought to navigation. Selection or development of a preferred plan must contend with this major conflict.

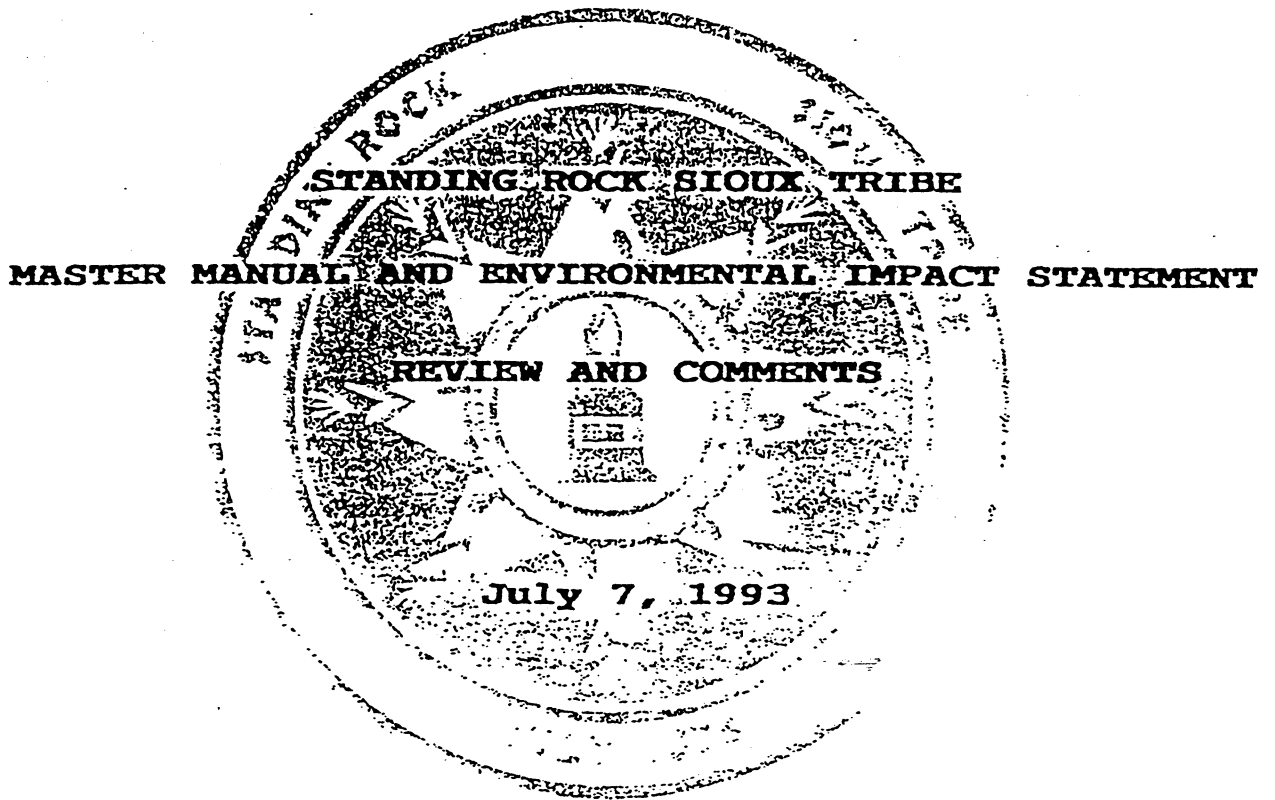


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STANDING ROCK SIOUX TRIBE
MISSOURI RIVER MASTER MANUAL AND
ENVIRONMENTAL IMPACT STATEMENT
REVIEW AND COMMENTS
JULY 7, 1993

EXECUTIVE SUMMARY

1. The history of Federal Policy towards Indian water rights in the Missouri River Basin must be reversed for the preservation and survival of the Indian people.
2. The United States Army Corps of Engineers Master Manual Review and preliminary draft Environmental Impact Statement do not consider Indian water rights. This institutional policy of studied ignorance will bring about difficulty or impossibility of Indian water use and benefits, will place at risk substantial economies based upon an artificially secure management scheme, and will necessitate revisitation of the Master Manual.
3. The hydropower benefits of the Missouri River Basin have substantially repaid the Federal Treasury, and the Missouri and Mississippi navigation industry prospers along with other downstream users, while the upstream tribes remain among the poorest people in the nation and still have to haul their own water. Indian and rural people pay the highest electrical rates in the country.
4. The Standing Rock Sioux Tribe on Oahe Lake is subject to drastic water level fluctuations affecting access, municipal and irrigation water intakes, livestock, and shoreline development without compensation for hydropower, navigation, and endangered species protection usage of Indian water. Standing Rock Sioux Tribe estimates its water rights necessary just to irrigate 303,000 acres on the reservation are 1.2 million acre feet annually.
5. The Master Manual review must be broadened to account for Indian interests.
6. The simulation model which forms the basis of the Master Manual Review and Update is incapable of incorporating Indian water rights, does not allow for consumptive use depletions or agricultural purposes, and does not provide for future depletions. The model is biased against the Tribes and upper basin states in favor of down stream states.
7. The model is insensitive to the 307 alternatives and results in minimal variation for hydropower, water supply, recreation, and flood control and is only sensitive to navigation.

8. The Master Manual Review has omitted a basin wide coordinated perspective and is therefore ineffective as a tool for management for the Missouri River System.

9. The McCarran amendment, state court jurisdiction over Indian water rights, erosion of the Winter's Doctrine, and forced state settlement by threat of litigation, present a harsh climate for the protection of Indian water rights and thus the survival of the Indian people.

10. The COE perpetuates the dilemma by refusing to acknowledge Indian water rights, and non-Indians continue to develop unused Indian water. Therefore congressional oversight of the Master Manual Review is necessary. New Indian water policy and institutional management structures are necessary to protect Indian water rights and keep the Indian people from being planned out of existence.

STANDING ROCK SIOUX TRIBE
MISSOURI RIVER MASTER MANUAL AND ENVIRONMENTAL IMPACT
STATEMENT REVIEW AND COMMENTS
July 7, 1993

I.

INTRODUCTION

This is a matter of utmost importance to the Standing Rock Sioux Tribe and the other tribes of the Missouri River Basin. The Indians are at a point where the history of federal policy towards our water rights in the Missouri River, its tributaries and the aquifers of the Basin must be reversed in order to preserve our water rights, and hence, our very survival.

In presenting Standing Rock Sioux Tribe's preliminary comments and recommendations to you, Senator Inouye, we will discuss the nature and scope of Standing Rock's water entitlements, the fundamental flaws in the United States Army Corps of Engineers Master Manual Review Process, the impacts of the Corps' flawed review process, and the course of action Standing Rock desires to pursue.

Our entitlements to water are presently perfected, fully vested water rights which are so senior as to bear an immemorial priority. Their enforceability and related attributes proceed, in part, from trust obligations imposed upon the United States arising out of the Fort Laramie treaties and related documentation

Enforcement and protection of these rights often entail exercise of jurisdiction over off-reservation activities. The sources of water available to these rights include surface supplies such as streams, lakes, and springs as well as subsurface supplies of every description, whether regarded as tributary or not.

In improving and maintaining our homeland's economy, Standing Rock Sioux Tribe has and will make use of water for a wide variety of both consumptive as well as non-consumptive purposes. These purposes include priceless religious, cultural, and environmental water uses (including the restoration of injured sources) as well as those uses such as irrigation, domestic and power production which are more traditionally measured in monetary terms. Our rights also include a great deal of flexibility in their enjoyment so as to enable us to change, sell or lease water from time to time as conditions warrant. Our water entitlements also include rights to equitable participation in the present and prior benefits of certain on-reservation and off-reservation, water-related projects.

The Standing Rock Sioux Tribe, along with other Indian nations in the upper Missouri River Basin, have substantial water rights to the Missouri. The U.S. Army Corps of Engineers (COE) manages the Missouri River, and in doing so is not giving consideration to the instream and consumptive water needs of the Tribes. The Corps of Engineers recently released a Preliminary Draft Environmental Impact Statement (PDEIS) on Missouri River Operations, and of the

307 alternatives for operations there is no consideration of the rights of the Tribes. The process of considering alternative management schemes is proceeding without inclusion of the need to provide stored water to Standing Rock and the region's other Tribes.

The Corps' flawed review process seems to have been maintained independently of the congressional mandate imposed on the President by the Western Water Policy Review Act of 1992 ("Review Act"). As you know, the Review Act notes that the competing demands of no fewer than fourteen federal agencies adversely affect the efficient handling of water policy which must incorporate planning for all competing federal, state, and local interests as well as the Indian Tribes. The Review Act requires that a comprehensive analysis be made and reported on within three years. The Corps' current process can only impair the realization of this mandate.

We are seriously concerned that the Corps' continued institutional policy of studied ignorance regarding Indian water rights will bring about 1) the difficulty or impossibility on the part of the Standing Rock Tribe in quickly and efficiently securing the full benefits of its extensive water entitlements; 2) the difficulty or impossibility on the part of non-Indian interests in properly preparing for the certain changes in water management and use which assertion and exercise of Indian water rights will cause and 3) the necessity for the Corps to revisit all of its prior

actions because of its failure to consider the impact on the Master Manual Review Process of the Western Water Policy Review Act.

The Secretaries of Energy, Defense and Interior have failed to preserve, protect and assist in the development of our valuable rights to the use of water. The Master Manual and associated PDEIS, developed by the Corps of Engineers, will perpetuate the diminishment of our water rights, and we will be excluded from the substantive benefits of the Pick-Sloan Program for the Missouri River.

A. Master Manual Background

The Corps of Engineers operates the six dams upstream to downstream (Ft. Peck, Sakakawea, Oahe, Big Bend, Fort Randall, and Gavins Point) along the main stem of the Missouri River, pursuant to its Missouri River Main Stem Reservoir System Reservoir Regulation Manual (Master Manual). The drought and the manner in which the Corps operates the dams have resulted in severe reductions in the water levels of the reservoirs in the upper Missouri River Basin. Standing Rock borders nearly 100 miles of Lake Oahe, the largest reservoir in the system. The water levels at Oahe are approximately 20 feet lower than normal, resulting in thousands of acres of lake bed being exposed, as mud flats.

As a consequence of these developments the upper basin states filed a lawsuit against the COE in 1991, seeking an injunction against the Corps' making certain water releases at the upper basin dams. State of South Dakota et. al. v. Needham et. al., Civ. No. 91-26 (D.N.D. 1991). The Flood Control Act of 1944 does vest in the COE considerable latitude in the operation of the dams, and the court denied the injunctive relief. Nevertheless, the COE did agree to re-evaluate the Master Manual. On March 15th, Standing Rock Tribal representatives met with the COE's reservoir operation staff that are undertaking the Master Manual review. We learned that the Corps is giving no consideration to Indian water rights and future consumptive needs in this process.

Accordingly, the Tribe is hoping that the appropriate Congressional committees will provide some oversight of the Corps' revision of the Master Manual. If no such influence gets exerted to protect the Tribe's rights, the treaty right for adequate water for Tribal self-sufficiency is jeopardized. The region's water resources shall continue to be utilized to benefit the regional non-Indian economy at the expense of the water rights of the Standing Rock Sioux and other Tribes.

Essentially, the Master Manual establishes the priorities for the operation of the system. It was prepared by the Omaha Division of the COE and revised in 1979, under the authority granted to the Corps to operate the dams in the Flood Control Act. Ultimately

the integration of project functions as prioritized by the COE in the Master Manual has significantly contributed to the declining levels of Lake Oahe.

The six COE massive earthen dams in the upper Missouri River basin are above Sioux City, Iowa. The three projects immediately above Sioux City, the Gavins Point, Fort Randall and Big Bend dams, are smaller, with a steeper channel and less fluctuations in the water levels. The three projects further upstream, the Oahe, Garrison and Fort Peck dams, in contrast, are larger, with considerable storage capacity and large hydropower generators.

The pattern of water level fluctuations in the upper basin reservoirs is seasonal. During the spring, run-off from snow melt in the Rocky Mountains recharges the tributaries and the Missouri River itself. This increases the levels of the Missouri River reservoirs. However, on April 1st the Mississippi River navigation season commences. The COE increases the release of water from the Missouri River reservoirs, above Sioux City, to provide water for barge traffic downstream. Meanwhile, the precipitation levels in the upper basin decrease during the spring and summer, resulting in further decreases in water levels. Thus, the reservoir levels generally increase during the late winter and early spring until April 1st, and then decrease until the following winter.

This scenario is further affected by the overall operational criteria, as set out in the Master Manual. These criteria may be summarized as follows:

1. Flood Control - The Master Manual establishes flood control as a priority in the operation of the main stem dams. This is consistent with the mandate of Congress in passing the Flood Control Act. This function requires the Corps to retain vacant space in the upstream reservoirs, called Exclusive Flood Control Storage Space. This space is designed to store flood waters, which are anticipated during the late winter and early spring months. Thus, during this time the COE maintains fairly high levels of releases at Fort Peck and Garrison, to provide for flood control storage space. Unfortunately, however, these upstream releases are not utilized to maintain higher levels at Oahe. Lower levels in Lake Oahe are detrimental to the Tribe because of difficulties encountered by livestock, boaters and recreators, game and fish management, water supply and irrigation intakes, and leaving vast mud flats strewn with hundreds of thousands of drowned and dead old-growth cottonwood trees. This, of course, is after our reservation was thrown into turmoil when the Corps inundated our prime bottom lands and forests when the mainstem dams were built through the middle of Indian Country in the 1950's.

As the Oahe powerplant has the highest capacity of all of the projects in the system, the water is likewise released from Oahe

generate power at peak periods of demand during the winter as follows.

2. Power Generation - Under the integrated management system mandated by the Flood Control Act, the project features whose beneficiaries are less able to pay for the federal investment of building the dams in the first instance, are subsidized by those project features that are more profitable. The Flood Control Act also authorized considerable irrigation development in the upper basin. The repayment of the federal investment for irrigation is not undertaken exclusively by the farmers that have benefitted, but is subsidized by the sale of the hydropower generated by the main stem dams. Consequently, the U.S. Treasury benefits from the sale of as much hydropower from the Missouri River dams as is possible. This results in lower water levels at Lake Oahe, because the Oahe Dam has the largest hydropower generators in the region. Our people on the Reservation, however, are still hauling water.

The peak periods of demand for power are during the mid-winter and mid-summer months. Releases from Oahe are maintained accordingly, further lowering water levels. The mid-summer peak period coincides with the middle of the navigation season, which further lowers Lake Oahe.

In addition, during the winter peak period ice forms on the Missouri River between the Garrison Dam and the City of Bismarck,

North Dakota, upstream of Standing Rock Reservation. This tends to block the river channel, causing flooding in Bismarck. Consequently, the COE reduces releases from Garrison to prevent flooding in Bismarck. This further reduces the water levels at Oahe.

3. Navigation - Ultimately, the current conflict over the water levels and operations of the Missouri River main stem dams pits the upper basin water users against the navigation industry downstream. The navigation industry transports goods from Cincinnati to New Orleans, with other major cities involved including Omaha, Kansas City and St. Louis. In terms of quantitative value, this industry competes with the value of the upstream agriculture and recreation industries. The economy on the Reservation, however, has only suffered.

As a result of navigation below Sioux City, upstream storage is drained from April 1st through November 30th. The COE's target releases during this period are 35,000 cubic feet per second (cfs) at the Gavins Point Dam near Sioux City. This substantially contributes to the declining reservoir levels, including Lake Oahe. In fact, the Corps releases water disproportionately from Lake Oahe for navigation without making releases from Fort Peck and Garrison Reservoirs upstream, exacerbating the Lake Oahe level fluctuations. In fact, in 1992 the Corps decided to conclude the releases below Sioux City five weeks prior to November 30th. In

response, the State of Missouri filed a lawsuit against the Corps, seeking an injunction against the shortened navigation season. State of Missouri v. Bornhoft, CV-92-4206-9 (W.D. Mo. 1992). The court refused to issue a temporary restraining order and prevent the shortening of the 1992 navigation season, but the issue of whether the COE can vary from the Master Manual in its annual operation of the dams, remains unresolved.

The project purpose of navigation has clearly become an upper basin versus lower basin issue. The interests of the Tribes and upper basin states overlap entirely on this issue. Such is not the case with regards to other operational issues, such as consumptive use and recreation.

4. Consumptive Water Uses - The O'Mahoney-Millikin Amendment to the Flood Control Act confers priority to consumptive uses over navigation. However, the COE effectively eliminates its meaning by taking the position that upper basin water users may use the water consumptively, but that the Corps has no obligation to operate the dam to keep the water levels high enough so that intake pipes can reach it. As a result, water intakes all around Lake Oahe, including the municipal and irrigation intakes at Fort Yates, North Dakota, on the Standing Rock Reservation, are threatened with freezing during the winter, dewatering, or silting up. In fact, the Tribe has already expended approximately \$1 million modifying these intakes, so they remain operational.

The Corps seeks the maintenance of certain levels of releases 10,000-12,000 cfs at Gavins Point, for downstream municipal use during the off-navigation season (winter). There is no reason that similar priority cannot be afforded to upstream municipal users. Ultimately, the Tribe is seeking that the Corps make realistic and fair assumptions about the potential for consumptive uses of Standing Rock Reservation and the instream needs along the Reservation river boundary.

5. Recreation - Finally, recreation is a project purpose affecting the operation of the dams, and the levels of water releases. Again the manner in which the Corps incorporate recreation development into the planning for water release detrimentally affects Lake Oahe levels. This results from the fact that the reservoirs below Pierre, South Dakota, are smaller and have had more shoreline stabilization and recreation development than the upstream, larger reservoirs north of Pierre. Not coincidentally, perhaps, the upstream reservoirs bound Indian reservations. Nevertheless, as a result of the increase in development, smaller size, and steeper embankments, the reservoirs below Pierre are less able to sustain water level fluctuations than Lakes Oahe, Sakakawea, and Fort Peck.

Consequently, when the releases at Fort Peck and Garrison are increased during the early winter for flood control storage space the releases at Oahe remain high, for hydropower, so Oahe enjoys

net gain of water. Similarly, when the COE prepares each March for the increased releases for navigation, it is water stored at Oahe which is utilized, as the downstream reservoirs are less able to sustain water level fluctuations. Lake Oahe is used to provide water and power for the accommodation of all project functions, with little or no consideration given by the COE to stable water levels. Standing Rock Reservation borders Oahe for nearly 100 miles , and its natural environment has suffered a devastating, disproportionate impact as a result. Meanwhile, the system's primary beneficiaries, the power industry, navigation industry, and downstream recreators, continue to enjoy Pick-Sloan benefits virtually without any associated costs and without paying for reliance on undeveloped Indian water rights.

B. Preliminary Draft EIS

In May 1993, the Corps of Engineers, Omaha Division, released its Missouri River Master Manual Preliminary Draft Environmental Impact Statement (PDEIS). The Corps released a "Preliminary Draft" EIS in response to political pressure from Congressional representatives from lower Missouri basin and Mississippi River states. In fact 71 senators and congressional members representing downstream interests signed a letter to President Clinton earlier this year. The Standing Rock Tribal Council remains concerned that its treaty rights to water may be sacrificed in the Master Manual review process, because of the influence exerted along these lines

and the receptiveness of the Corps of Engineers to such influence. This highly unusual procedure, the release of a "preliminary draft," reflects the political nature of Missouri River water management, and the threat thereby to the Tribe's treaty rights.

The substance of the PDEIS, in addition to the procedure followed by the Corps, confirms the concerns of the Tribal Council. Essentially, the Corps has simulated the flow of the Missouri River for nearly 100 years, and developed alternatives for the operation of the main stem dams given the region's hydrology each year. The Corps attributes "value functions" to each project purpose including hydropower, navigation, and water supply. It then calculates the most valuable economic method of operating the system over time, for each operational alternative.

Using this analysis, the PDEIS consists of 307 alternative for the operation of the main stem reservoir system. This panopl of alternatives is divided into two separate conceptual groups National Economic Development (NED) alternatives and Environmental Quality (EQ) alternatives. The NED alternatives value the variou project functions, given different reservoir pool and navigatic service levels. The COE thus determined, within the narro confines of its value functions, the relative overall contributio of the main stem reservoir operations to the national economy, fo each NED alternative.

The EQ alternatives track the various ways to operate the system that most closely resemble the natural flow of the Missouri River. These alternatives thus improve the habitat for the native fish, but do not necessarily do so for the wide variety of game fish that have thrived in the reservoirs in recent years. The EQ alternatives seem to result in draining the main stem reservoirs and re-establish flows at pre-Pick-Sloan levels, and accordingly are probably not serious alternatives in the long run.

Thus, the COE has undertaken modeling on various alternatives for operating the main stem reservoirs, and for valuing the project features. The PDEIS is an extremely technical document designed to comply with the Flood Control Act of 1944 and the National Environmental Policy Act. However, it totally ignores in the instream and consumptive water needs and rights of the Standing Rock Sioux and other Tribes in the Missouri River basin. By doing so, it purports to be a resource management tool, but it ignores the ownership rights to a substantial portion of the resource. Consequently, Congressional action is necessary to ensure that the federal presence in the Missouri River basin amounts to more than the continued suppression of Indian water rights and destruction of the environment on the Standing Rock Indian Reservation.

C. Infringement On Indian Rights of Reclamation Projects

The Standing Rock Tribal Council is concerned that the omission by the Corps of Engineers of consideration of senior and

paramount Indian water rights in the PDEIS reflects the more general attack on Indian water rights, by federal and state water agencies and courts. In the arid and semi-arid west, it is said, "water runs uphill - toward money." This quotation illustrates what westerners know intuitively, that without adequate development and supplies of clean, healthy water, the cities, farmlands and grazing lands of the western states would not be as bountiful as they are today.

Thus, when the U.S. Supreme Court considered the "Winters doctrine" water rights of Indian Tribes, it determined that along with our reservation of land, treaties such as the Fort Laramie Treaties of 1851 and 1868 included reservations of all of the water that our Tribal members shall need to prosper on Standing Rock Reservation. United States v. Winters, 207 U.S. 564 (1908), Arizona v. California, 373 U.S. 546 (1963). As water is so valuable in the west and the rights of the Tribes in the Missouri basin are so vast and have the senior priority, there is competition for the scarce resource between the Indian nations and our non-Indian neighbors. In fact, as one prominent commentator has described it, "One of the reasons Indian tribes have experienced difficulty obtaining water is because they must compete directly with these powerful non-Indian(s)." McCool, Command of the Waters; Iron Triangles, Federal Water Development, and Indian Water, 66 (1987).

Indeed, notwithstanding our best efforts, we at Standing Rock Reservation have been only marginally successful at acquiring federal assistance for water development on our Reservation. The Tribal Council has authorized comprehensive soils surveys for the Reservation. These surveys indicate that we possess over 303,000 acres with irrigable soils. This equates to 1.2 million acre feet of senior priority water rights annually. As our Reservation apparently does not possess valuable coal, oil, geothermal resources or other mineral deposits, we believe that irrigated agriculture remains an important element of our overall economic development. However, we have, up to this point, obtained federal assistance for irrigation development for only approximately 2,000 acres, with another 2,380 acres to be developed under the Garrison Reformulation Act of 1986.

Meanwhile, there have been substantial federal subsidies for non-Indian irrigation development in the Missouri basin, and throughout the western states. As the National Water Commission stated many years ago:

Following Winters, more than 50 years elapsed before the Supreme Court again discussed significant aspects of Indian water rights. During most of this 50 year period, the United States was pursuing a policy of encouraging the settlement of the West and the creation of family-sized farms on its arid lands. In retrospect, it can be seen that this policy was pursued with little or no regard for the Indian water rights and the Winters doctrine. With the encouragement, or at least the cooperation, of the Secretary of the Interior, the very office entrusted with protection of all Indian rights, many large irrigation projects were constructed on streams that flowed through or bordered Indian reservations With few exceptions the projects were planned and built by the

Federal Government without any attempt to define, let alone protect, prior rights that Indian Tribes might have had in the waters used for the projects In the history of the United States Government's treatment of Indian tribes, its failure to protect Indian water rights for use on the reservations . . . is one of the sorrier chapters.

United States National Water Commission, Water Policies for the Future - Final Report to the President and to the Congress of the United States, 474-475 (1973).

Twenty years later, the Corps of Engineers is planning to maintain this genocidal course of action, and the government of the Standing Rock Sioux Tribe respectfully requests that Congress intervene.

As one Tribal leader has described this issue:

Our recommendation is that the United States recognize and meet its moral and legal obligations to provide sufficient water for both our present and future needs and fund our water development projects to meet those needs, so that some day - 50 years, 100 years from now - our lands will have received water development projects and subsidies equal to those given the non-Indian westerners over the past 100 years.

Zah, Water: Key to Tribal Economic Development, Miklas and Shupe, ed., Indian Water 1985, 75 (1986).

D. State Court Adjudication of Indian Water Rights

There are some 28 Indian Tribes in the upper Missouri River basin. The cumulative senior water rights of the Tribes are substantial, and the failure of the COE to incorporate these rights into its planning constitutes the primary flaw in the PDEIS. Of these Tribes there are eight, including Standing Rock, that are

constituent bands of the Sioux Nation. They enjoy the substantial rights reserved in the Fort Laramie treaties of 1851 and 1868. These treaties articulate the broad and far-reaching principles underlying the relationship between the Sioux Tribes and United States. These principles remain the basis of the relationship between the Sioux Tribes and United States.

Accordingly, the Standing Rock Tribal Council remains reluctant to participate in state forums for the definition of any of our rights, but especially for rights so valuable as our water rights. Our governmental relations with the larger non-Indian society are Tribal - federal relations, not Tribal-state relations. In fact, the U.S. Supreme Court itself recognized that "because of the local ill feeling, the people of the states where they are found are often the [the Indians'] deadliest enemies." United States v. Kagama, 118 U.S. 375 (1886). As Navajo President Zah succinctly described this situation as it applies to our water rights:

Yet now there are those who seek to limit the water available to us to meet our pressing needs, as well as the water needed for any future needs. Our water requirements have created a "problem" for the non-Indians. From our perspective, we have what they want and, just as was done in the past, they are looking for ways to take what we have.

Miklas and Shupe, supra (emphasis added).

The state governments, representing the non-Indian water users

that are in competition with the Indian Tribes for the use of water, are attempting to quantify, or limit, the extent of Indian water rights. The Federal Government has trust responsibilities to protect Indian water rights and the Secretary of the Interior is involved in Indian water rights in his role as principal trustee to the Tribes. The Congress has waived the sovereign immunity of the United States in certain water rights adjudications. 42 U.S.C. 66 (McCarran Amendment). Consequently, notwithstanding the general rule that Tribes are not subject to state jurisdiction, and the Court's prior recognition of the local ill will experienced by the Indian people, the U.S. Supreme Court permits the adjudication of Indian water rights in certain state courts. Colorado Water Conservation District v. United States, 424 U.S. 800 (1976).

As a practical matter, this situation confers enormous leverage upon those seeking to minimize the extent of our treaty rights to water. It increased the urgency with which the Tribal Council approaches the COE Master Manual PDEIS. We have witnessed the Secretary of the Interior provide scarce Missouri basin tributary water to non-Indian irrigators, cutting off stream flow to the Reservation. We understand that our rights to the water of the Missouri's main stem and tributaries on our Reservation may well be subject to claims of state court jurisdiction. And now the PDEIS outlines the vision of the Corps of Engineers for the future management of the main stem of the Missouri River. It offers no consideration whatsoever of our rights to the water resource, nor of the existing or future potential environmental

damage of the operation of the system to our Reservation. Ultimately, if the Congress will not intervene in this process, we are concerned that our water rights shall continue to be utilized for energy production by downstream recreators, barge traffickers, and irrigators, without our people benefitting, and that fluctuating reservoir levels shall further degrade our environment.

K. Proposals for Inclusion of Tribal Treaty and Indian Reserved Water Rights and Economic and Environmental Concerns In COE Master Manual Review and Update

As stated earlier, the COE makes it very clear that it considers Indian water rights to be a questionable proposition at best, and that its management scheme for the main stem of the Missouri River need not take these rights into consideration. See U.S. Army Corps of Engineers, Missouri River Master Water Control Manual Review and Update, Preliminary Draft Environmental Impact Statement, 3-64 (May 14, 1993). Significantly, it is apparent that Indian water rights are not included in the equations by which the reservoir levels are established for the various operational alternatives as discussed above. The very existence of these rights is questioned, as is evidenced by the conditional language in the citation above. Yet, as recently as 1989, the U.S. Supreme Court reaffirmed the Winters doctrine. Clearly, the cavalier treatment of Indian reserved water rights and the failure by the COE to incorporate the existence of these rights into its model for reservoir regulation violates the principles established by the Supreme Court in Winters, and constitutes the very type of violation of Tribal rights so eloquently derided by the National

Water Commission, 20 years ago.

The thrust of the PDEIS is the consideration of alternatives for reservoir regulation by the Corps. The primary water allocation issues include:

1. Length of navigation season and navigation service levels (e.g., the amount of time that substantial releases of water shall be made from the Gavins Point Dam, and the precise level of such releases);
2. Non-navigation service (e.g., wintertime) releases from Gavins Point;
3. Maintenance of fish spawning habitat in the three large upstream reservoirs (Lake Oahe, Lake Sakakawea and Fort Peck Lake) by filling each reservoir, at the expense of the other two, once every three years; and
4. Operational modifications to improve the nesting habitat for threatened and endangered species.

In the PDEIS, the Corps considered modifications in reservoir regulation by adjusting the various storage pools. For example, each reservoir consists of a permanent pool, below which the

reservoir shall not be drawn down at any time; a carry-over multiple use pool, which is used for water supply and other uses; and an exclusive flood control pool, which provides storage space to avoid flooding downstream. The allocation of these storage capacities determines the amount of water stored above Gavins Point overall, and the level of each respective reservoir.

The Standing Rock Tribal Council proposes that the permanent pool of Lake Oahe be increased modestly, and that the carry-over multiple use pool should have an increment dedicated as Indian water rights, namely for the Standing Rock Cheyenne River Sioux Tribes. The increase in Oahe's permanent pool shall increase the spawning habitat for game fish, and peaking hydropower generation at the Oahe powerplant.

Peaking power is the most valuable of the power generated by the main stem Missouri River system. It is generated and marketed during the summer and winter months, when the demand is highest for air conditioning and heating. Accordingly, it produces more revenue than the power generated at the non-peaking facilities. By raising Oahe's permanent pool, there shall be additional peaking power generated and marketed, and the additional power revenues can be utilized for economic development and water development on Oahe's Indian reservations. The water dedicated as an Indian increment in the carry-over multiple use pool shall be available for the additional on-Reservation water projects.

The multiple use pools for the other main stem reservoir should likewise contain Indian increments, which set aside adequate water for present and future consumptive water needs on the reservations, and in-stream needs. In this manner, the COE could incorporate the rights of the most senior water rights holders in the upper Missouri basin, the Indian nations, into its management of the main stem reservoir.

Management challenges will be presented in order to honor senior Indian water rights and some physical solutions may exist. Additional water could be derived by modest decreases in navigation service, which in turn may be offset by water rights exchange including increased tributary contributions to the main stem from the Kansas, Platte, and Nebraska Rivers considering existing compacts, and by improved water conservation practices by irrigators and municipalities. Thus, the system may provide for Indian water rights, with only minor adjustments by other Pick Sloan project beneficiaries.

The Standing Rock Tribal Council's estimate is that its water needs are based in part on the existence of 303,000 irrigable acres on our Reservation. This equates to about 1.2 million acre feet annually attributed to Standing Rock Reservation.

"Questions of fairness pervade the issue of Indian water

rights." Wilkinson, The Future of Western Water Law and Policy, included in Miklas and Shupe, supra, 55. Clearly, it is only fair, and not unduly burdensome, for downstream navigators, who have been the major beneficiaries of the system operations and use of Indian water up until the present, and reclamation farmers along the major downstream tributaries, to incur minor reductions in service levels, so the United States may fulfill its treaty obligations to the basin's Indian nations.

Significantly, doing so will contribute substantially to the restoration of the environment along the large upper basin reservoirs. Standing Rock Reservation's environment has been devastated by lake level fluctuations of 25 feet over the last five years. Subsistence wildlife harvesting has been affected, main stem water quality has been degraded, and thousands of acres of lake bed have been exposed as mud flats strewn with hundreds of thousands of dead and uprooted old-growth cottonwood trees. By incorporating Indian water rights into the management of the system, as provided herein, the Corps of Engineers may reverse this environmental destruction in the upper Missouri basin, and on the Standing Rock Indian Reservation.

F. The Scope of the Master Manual Review and Update Must Be Broadened

The current study of alternatives by the Corps of Engineers is much too narrow to accomplish the type of reform that is necessary

to protect Indian water rights, and to effectuate the proposals made herein, as discussed in more detail in terms of basin-wide management later in this paper. For example, the PDEIS provides that, "Although structural changes in the reservoir system and navigation channels could be considered, such changes are not the subject of the Study Tributary reservoir operating alternatives are also not within the scope of the Study." COE, PDEIS 2-2.

The Corps looks for neither the forest nor the trees. It is incomprehensible, from an Indian perspective, that the executive agency entrusted with the management of the Missouri River omits consideration of tributary flows, the impact of groundwater or surface water flows, non-point source water pollution management needs, and additional project development for flood control, hydropower, and stream bank stabilization. For example, fairly modest authorizations of funding from Congress could provide long-term protection for cultural resources from erosion, flood control levees to improve early winter flows in river reaches to prevent reservoir level draw-down so low during the early winter hydropower efficiency improvements, watershed management planning and pollution control assessments and programs. The current study provides no guidance on these important needs, which would contribute significantly to project benefits and the environmental quality on the Standing Rock Indian Reservation, and throughout the Missouri River basin. These needs are discussed in detail in other

areas of this paper.

The current study is hydrologically inadequate, as it fails to address groundwater and tributary management issues. These issues implicate serious water supply and water quality issues. For example, during times of shortage, such as the current drought, groundwater may provide alternative supplies for consumptive water uses or to supplement tributary flows. This in turn impacts water quality and wildlife habitat. Yet, although the Corps of Engineers emphasized basin-wide reservoir regulation, these types of basin-wide environmental and ecological issues are simply not addressed.

Instead, the study emphasizes dollar values for project functions, under different operational scenarios. The value function process is not a useful tool in basin-wide resource management. For example, Indian burial grounds cannot be valued in the same manner as navigation barge traffic. In addition, in attributing value functions the COE ignores economies of scale. The development of a modest size recreational outfitting business may contribute the same to the national economy if it is located in Omaha or Standing Rock, but the value of the same business in terms of economies of scale is substantial. The unemployment rate on Standing Rock may be ten times that of Omaha. The human resources and public health needs on the Reservations are dire.

Yet, in the NED and EQ schemes outlined in the PDEIS, the business is valued the same, whether it is in Indian Country or off-Reservation. The narrow focus of the Corps' study ignores the basin-wide environmental and human resource issues that dominate the landscape. It must be revised, and assess alternatives for tributary management, groundwater management, water pollution control, hydropower upgrades and on-Reservation economic and social development.

G. Hydropower Generation and Allocation

Hydropower remains the most valuable of all Pick-Sloan project features. The hydropower generated at the Oahe and Big Bend Dams generates valuable peaking power. The hydropower is marketed by the Department of Energy's Western Area Power Administration (Western), for the repayment of the federal investment for the construction of the dams and powerplants, and Pick-Sloan irrigation development. The public at large benefits from the sale of low cost firm power, and the reclamation beneficiaries benefit by acquiring even less costly pumping power, and for the payment of the subsidy for the reclamation projects.

Essentially, the non-Indian economy and non-Indian farmers especially enjoy the benefits of hydropower system that in large part is driven by Indian water. Meanwhile, our people haul drinking water.

The federally generated hydropower at the main stem system holds the key to alleviating the poverty on the Missouri basin's Indian Reservations. Although the hydropower program must finance repayment of the federal investment for Pick-Sloan, the system has shown that revenues are clearly adequate for repayment of the investment plus additional project development. For example, from 1950, when the repayment from the sale of hydropower commenced, approximately \$1 billion of the \$1.5 billion investment has been repaid. During this time the Congress has in fact increased repayment obligations by integrating reclamation projects in Colorado and Wyoming into the Pick-Sloan repayment scheme. Meanwhile, in many years the treasury has received more revenues than the repayment formula requires. Thus, Pick-Sloan hydropower is paying the cost of the Pick-Sloan and integrated projects federal investment ahead of schedule and is near completion of the repayment obligation.

Tribal project development should be integrated into the Pick-Sloan hydropower financing and repayment scheme. Without doubt, the system can accommodate hundreds of millions of dollars worth of Tribal water and economic development projects, with minimal impacts on the rates or marketing system. Anticipated impacts can be minimized through increases in hydropower production. The increased production can be effectuated by increasing the permanent pool at Oahe, as recommended above, by efficiency improvements at the Oahe powerplant, which the COE has recommended (COE, Missouri

River Division, Summary Report of Feasibility Studies, September 1989 revised February 1990) and by development of the Gregory County Pumped Storage Project, a peaking power facility authorized in the Water Resources Development Act of 1986.

II.

TECHNICAL ANALYSIS OF MISSOURI RIVER MASTER WATER CONTROL MANUAL REVIEW AND UPDATE

A. SUMMARY

1. The simulation model which forms the basis for the Missouri River Master Water Control Manual Review and Update is a state-of-the-art simulation model which employs benefit functions based on the U.S. Water Resource Council's 198 Principles and Guidelines for Water and Related Land Resource Implementation Studies. Consequently, it is a state-of-the-art economic analysis model, but incorporates deficiencies which make it inadequate for analyzing concerns of the Standing Rock Sioux Tribe involving operation of the Missouri River.

2. The model, as presently constructed, is incapable of incorporating the Standing Rock Sioux Tribe's Winters doctrine water rights because the model does not even allow for consumptive use depletions or diversions for agricultural purposes or other broader purposes and considers only the existing depletion condition for the Missouri River. The model does not provide for incorporating future forecasts of depletions or diversions. The model would have to be modified

in order to allow for incorporation of the Tribes's Winters doctrine rights.

3. The range of options studied in the model does not incorporate important operating policies and/or changes relevant to the Standing Rock Sioux Tribe's concerns with existing operation of the main stem Missouri River. For example, the range of options investigated in the 277 National Economic Development (NED) Alternatives and 30 Environmental Quality (EQ) alternatives includes only two options for intra-system reservoir regulation. Neither of these reservoir regulation options address the existing problem of the Corps of Engineers using Lake Oahe as the principal source of water supply for navigation releases during the navigation season thereby drawing down Lake Oahe and preserving relatively high water levels in Fort Peck and Garrison reservoirs. Another example of inadequacy of the range of options studied in the model is the lack of options for reducing the frequency with which Standing Rock Sioux Tribe municipal and irrigation water intakes from Lake Oahe will be dewatered.

4. The model is biased against the Standing Rock Sioux Tribe and the upper basin states (South Dakota, North Dakota, and Montana) because the majority of benefits estimated by the model from navigation, hydropower, recreation, flood control, and water supply occur downstream from Gavins Point Dam.

Because of this disproportionate share of the benefit occurring downstream, the model, the operation of the model and the conclusions reached from the model are biased against the upstream states and the Tribe. This inherent bias in the model in favor of the downstream states should provide additional incentive for cooperation among the Tribe, North Dakota, South Dakota, and Montana in insuring that the model and the results of the model do not result in acceptance of an operating policy for the main stem Missouri which is adverse to the Tribe and the upstream states.

5. The model in its present form unfairly penalizes the Tribe for its present lack of development because of the inability of the model to consider future development and the model's failure to include Winters doctrine rights.

6. It would be difficult to modify the existing model to adequately take into account the various concerns of the Standing Rock Sioux Tribe with regard to operation of the main stem Missouri River. Without substantial modification of the model in order to incorporate future consumptive water uses, future water resources development, inclusion of the Winters doctrine rights, modification of benefit functions, and evaluation of a broader range of alternative operating policies, the model will not adequately consider the Tribe's concerns with operation of the Missouri River.

7. The model is insensitive to the 307 studied alternatives. Hydropower alternatives vary only 3%, watersupply alternatives vary only 6%, and reservoir and flood control vary only minimally. Therefore, the alternatives must be broadened to include tribal and not just navigation concerns.

B. MODEL DESCRIPTION

The basic model used in the update investigation is a hydrologic simulation model using 93 years of monthly streamflow data which have been adjusted for present levels of development, i.e., present (1990) depletion conditions. The model only includes benefit functions for navigation, hydropower, recreation, flood control and water supply benefits. It excludes irrigated agriculture benefits and does not allow for consideration of future development. The model allows for consideration of a National Economic Development objective and an Environmental Quality objective.

The model's benefit functions have been constructed in accord with the Economic and Environmental Principals and Guidelines for Water and Related Land Resources Implementation Studies, (P&G), U.S. Water Resources Council, March 10, 1983. Consequently, the model is in reasonable agreement with present federal agency policy concerning economic analysis of water resources systems.

C. ALTERNATIVES INVESTIGATED

The model investigated 276 National Economic Development alternatives in addition to the existing 277th operating policy for the main stem reservoirs and Missouri River system. In addition, 30 Environmental Quality alternatives were investigated for a total of 307 alternatives. The range of options investigated in these alternatives is relatively narrow, however. Table 1 summarizes the range of options for navigation criteria, permanent pool levels, system service levels, and intra-system regulation. For example, only six permanent pool levels were investigated in the system together with 4-5 levels of navigation service and only two intra-system regulation options were investigated. This range of options investigated is not adequate to incorporate the concerns of Standing Rock Sioux Tribe. For example, the intra-system reservoir regulation only looked at two options (present operation and modified regulation) in order to better balance the operation of the system reservoirs. A principal problem to the Tribe from the existing operation of the Missouri River is the fluctuation and lowered lake levels in Lake Oahe resulting from the dependence of Lake Oahe by the U.S. Army Corps of Engineers as the primary source of water for navigation purposes during the summer. Present Corp of Engineers operations policy uses Lake Oahe almost exclusively as a source of navigation supply rather than making compensator releases from Fort Peck and Garrison to make replacements to Lake Oahe. This present operating criteria results in greater fluctuation and drawdown in Lake Oahe as compared to Garrison and

Fort Peck. An intra-system regulation criteria to better balance these reservoirs is not considered in the model.

D. MODEL RESULTS

Model results are surprisingly insensitive to the various alternatives studied. As indicated in Table 2, there is remarkably little variation in hydropower benefits among the alternatives; average annual hydropower benefits varied from \$613.57 million to \$637.16 million over all 307 alternatives studied. This represents only a 3.7 percent variation in hydropower benefits for the 307 alternatives

A similar situation exists for water supply benefits where average annual benefits ranged from \$510.13 million to \$544.90 million, a variation of 6.4 percent over all 307 alternatives. This indicates little sensitivity in hydropower and water supply benefits to how the reservoirs are operated. The same conclusion can be reached with regard to flood control and recreation benefits. The only possible exception would be navigation benefits; when the reservoirs are operated according to an environmental quality objective, the navigation benefits drop to approximately 25 percent of the benefits now accruing with the existing operating criteria.

This lack of model sensitivity to operating policy alternatives suggests that the alternative operating policies studied need to be

broadened to include a greater range of policies. The 277 Nation Economic Development alternative operating policies primarily concentrate on alternatives directly affecting navigation; the list needs to be broadened (not increase) to include options affecting the Tribe's concerns and not merely those relevant to navigation.

Another interesting aspect of model results is the distribution of model benefits among the various purposes. As indicated in Table 3, only 1.3 percent (\$16.19 million) of average annual benefits came from navigation purposes while the majority of total average annual benefits came from hydropower (\$625.52 million annually, 42.7 percent), and water supply (\$544.9 million annually, 32.7 percent). These model results again indicate the lack of importance from a National Economic Development perspective of navigation.

Model results indicate the bias in results toward the lower basin and relative unimportance, according to the model of the upper basin. For example, only 18.7 percent of the water supply benefits occur upstream from Gavins Point Dam according to the model (see Table 13-1 in Volume 1) while 81.3 percent occur downstream. Furthermore, only 0.7 percent (\$4.04 million/year) of the total water supply benefits (\$544.9 million/year) accrue from Lake Oahe (see Table 13.1 in Volume 1). This disproportionate share of benefits indicates the bias in the model and model results toward the lower basin and indicates how recommended operating policies

resulting from the model will be biased toward preventing dewatering of water intakes below Gavins Point as compared to Lake Oahe.

The same argument can be made with respect to flood control benefits where only 20 percent of the flood control benefits occur upstream from Gavins Point Dam.

E. ADDITIONAL PDEIS COMMENTS

The 276 New NED Alternatives have modified intrasystem regulation which occurs over a three year cycle. First year Lake Oahe experiences a drawdown, second year Lake Oahe experiences rising spring water levels, third year Lake Oahe experiences a drawdown. Ft. Peck and Garrison undergo drawdowns only once over the three year period. This is apparently due to the size of Lake Oahe and its lack of development along the shores and its ability to provide large navigation flows. However, these intrasystem alternatives are in no way adequate.

COE Vol. 1 "Alternatives Evaluation Report" states that the Missouri River Natural Resources Committee (MRNRC) recommended rising or constant pool elevations during spring spawning to provide vegetative growth and improve spawning. This would be desired for Lake Oahe which has experienced a large drawdown in the

past few years. Modified intrasystem regulation is necessary to work towards answering this recommendation. Monthly average elevation patterns differ from Ft. Peck Lake and Lake Sakakawea. Lake Oahe has no spring rise and early summer decline. Lack of spring rising levels are due to high spring releases for navigation. July and August falling levels are due to navigation releases. The alternative with no navigation season results in an August elevation which falls at a lower rate because of low summer releases for navigation.

COE Vol.2 "Reservoir Regulation Studies" states that if system storage reserves are adequate it is desired to maintain flows above minimum levels. This will reduce need for dredging and allow bar loading to greater depths. However, the navigation industry only provides a benefit of \$16.19 million as shown in Table 3 Vol.1. To provide desirable levels at Lake Oahe for spawning usual requires accumulation of plains snow cover during winter months and moderate early spring runoff from melting snow cover. This requirement is due to reduced summer levels caused by providing navigation flows.

COE Vol.4 "Hydraulic Studies" states that Oahe and Big Bel Reservoirs fluctuate the most. This is due in part to the fact that there are reservoirs below these two dams, as compared to other dams that have river reaches below them that would be flooded. Dikes could be built on river reaches, similar

extensive downstream channelizing, and releases of larger quantities of water at the dams above these reaches would lower fluctuations at Oahe, and Big Bend Reservoir.

Low water levels have caused large costs (\$1 million) to Standing Rock due to dewatering of both irrigation and municipal water intakes. COE Vol 1. recognizes that low water levels could increase daily operations, and possibly lead to capital costs for intake modification, which is the case at Standing Rock Reservation.

Higher permanent pools would help intakes on lakes, but the model shows that this would lower benefits to intakes on downstream river reaches, in the event of an extreme drought. COE Vol. 6 "Economic Studies" indicates the larger impacts are found in downstream river reaches, and these downstream river reaches contain major municipal and powerplant facilities, illustrating to model downstream bias.

The best alternative for upstream water supply shown in COE Vol. 6B is Alternative GCAA21. This alternative has a 48MAF (million acre feet) permanent pool, 14KCFS (thousand CFS) winter service levels, 9KCFS spring and summer service levels, a modified navigation criteria, with a first modification intrasystem regulation. This seems reasonable with a larger pool and lower releases.

Modification Cost Studies were shown in COE Vol. 6B for municipal

and irrigation intakes. Modification cost per foot of decrease in surface elevation averaged \$30,000 for small municipal and \$2,000 to \$20,000 for extension modification of large irrigation facilities. The study is more concerned with water supply for larger downstream interests, and as a result upstream smaller users develop cost impacts as dewatering occurs.

In COE's PDEIS, data that 10 bald eagles wintered on Lake Oahe in 1988 cannot be correct, and there were many more than that.

EQ-1 and EQ-2 alternatives (U.S. Fish and Wildlife Service [FWS preferences) were rejected by COE because navigation and flood control objectives could not be met.

Model "Young of Year" (YOY) fish production benefits involve huge drops in pool level from spring to summer for best production. This cannot be correct.

In COE VOLUME 7A "Environmental studies" the Tribe is not recognized as a co-manager of the Missouri River and was not consulted when the COE was developing the PDEIS. Four states, FWS, MRNRC, and the Missouri River Basin Association (MRBA) participate in this study, although there were not any tribes represented.

The State of South Dakota is relying upon upper Lake Oahe for all of its needs for walleye eggs. The long-term objective is to maintain this plan. No walleye fry or fingerlings have ever been returned to the Standing Rock Sioux Tribe, however, the tribe will be doing so this fall.

The State of South Dakota's model for predicting impacts of system operating alternatives on fish production needs additional study/. The YOY catch and stocking rates do not correlate. The sample sizes may have been too small.

In COE Vol. 7C, MRNRC made no flow recommendations to the COE for Lake Oahe regarding fish habitat or production, except to maintain elevations from April through May. This is inadequate from the Tribe's perspective. It has been found that major river alteration usually results in a loss of bio-diversity and a reduction in net productivity. The Master Manual review supports these findings.

In COE Vol. 7D, the October 26, 1991 letter from Bovee to the COE criticizing CSRS (Companion Standard River System) points out problems with pre-project cross sections, calibrated to post project hydraulics to develop CSRS criteria.

COE Vol. 7F fails to mention the Grand River delta and only mentions the Cannonball River delta on Standing Rock Reservation.

In COE Vol. 7H, it is documented that the past 6 years of drought have created temporary riverine habitat along the upper 58 miles of Lake Oahe. We are now entering a wet cycle (thus far in 1993, we are over average rainfall for the system by about 50 percent) and endangered species tern and plover habitat will be flooded and lost. Lake Oahe elevation is 10 ft. above last year. The FWS has stated that the alternatives the COE is proposing do not properly address the tern and plover.

According to the FWS Study (COE Vol. "9"), DEQ12B is the best alternative, all things considered. This is the reduced summer navigation flow alternative. It is the best environmentally balanced alternative, although it still may not avoid adverse impacts to some listed species.

The FWS indicates that there are serious problems between FWS and COE. The FWS believes that conservation and recovery of endangered species must be better addressed and the COE must elevate the priority of fish and wildlife resources. This is supported by the Solicitors office.

Ninety (90) percent of historic sand bar habitat and 75 percent of the aquatic off-channel habitat has been lost through Missouri River modifications over the past 50 years. The FWS is in position to demand consultation and a final EIS that properly addresses fish and wildlife resources.

F. Technical Conclusions

The following conclusions can be reached based on this preliminary technical analysis:

1. There is no provision in the model for incorporating future development of water resources because the model only looks at existing conditions. Furthermore, the model does not include any consideration for agricultural (irrigation) benefits. Both of these aspects penalize the Tribe for its relatively slow rate of development to date and make the model inadequate for dealing with the Tribe's concerns involving the existing operation of the Missouri River.
2. The model in its present form cannot incorporate the Winters doctrine water rights because it does not allow for increased consumptive use of water by agriculture or future increased utilization of water for any purpose. The model would have to be significantly modified in order to allow inclusion of the Winters doctrine water rights.
3. The range of alternatives considered by the model is narrow and does not include important considerations for the Tribe. The model does not provide for adequate

alternatives concerning balancing of the main stem reservoirs and intra-system regulation considerations

4. The model is biased toward the downstream states because the preponderance of benefits presumably occur in that area. For example, only 20 percent of the flood control benefits occur upstream of Gavins Point Dam. The remaining 80 percent occur downstream primarily in the Sioux City, St. Joseph and Herman reaches. The recreation benefits are also biased since they accrue only on the main stem and do not include the tributaries. The vast majority of water supply benefits accrue to the downstream areas from Gavins Point where 18 of the thermal power plants along the main stem system are located and result in water supply benefits from the use of cooling water.

III.

NEED FOR MISSOURI RIVER BASIN-WIDE WATERSHED MANAGEMENT PERSPECTIVE

This section of our paper to you, brings focused attention to the major water resource and basin-wide water management issues that have not been addressed fully by the U.S. Army Corps of Engineers (Corps) in the development of the Missouri River Master Manual associated environmental impact statements.

The maintenance of the integrity of the Missouri River system

necessity involves watershed-wide issues of land use, hydroelectric flow and protection of water quality, water rights and priorities endangered species restoration and related environmental issues. It is the thesis of this section that the Master Manual has omitted a basin-wide, coordinated perspective, and is therefore ineffective as a tool for the management of the Missouri River system. At a time when such major river systems as the Colorado and Columbia are undergoing significant examination of all uses, watershed planning, power production and distribution, and institutions for water resource management, the omission of these issues in the Master Manual is of serious concern.

The integration of Tribal water rights within the Missouri River system highlights the need for a basin-wide perspective in the development of the operative documents for the river. First, the total claim to water for the many Tribes in the basin for a variety of purposes has not been fully quantified, however, current estimates range in the tens of millions of acre feet. These rights would be senior to all other users of the system, and the use of Tribal water would have broad geographic impact and distribution. Secondly, Tribal rights in the Missouri system are broad in scope, and are linked to Tribal self-determination and economic development. Tribal water rights may also be free from federal or state administrative interference, as indicated by the 1992 Western Water Policy Review Act. This suggests new institutional arrangements for water management will be necessary. Finally,

planning, protection of water quality, and effective watershed-wide protection and management strategies. Failure to do so would perpetuate the degradation and damage to Tribal water caused by federal and state facilities, and would preclude Tribal development options.

Following is a brief description of the major water resource management issues of concern regarding the Master Manual for the Missouri River system. In the eight volume set which constitutes the Manual, scant attention has been focused on the realities of basin-wide water management. It is suggested that much more work must be done in order to develop an effective management tool for the Missouri River system. The protection of Tribal sovereignty requires such an analysis be done.

A. A Description of Water Management Issues
Missouri River Master Manual

1. The Master Manual as developed by the Corps is too narrow in scope to address the pressing, real-world challenges facing water resource managers.

Adequate Water Resource Monitoring Network. Effective water resource management for multiple purposes requires

an adequate monitoring network. The present network permits only mainstem and major tributary accounting. Tribal lands and resources are currently not monitored or accounted for in river operational models. An overall water balance for the system, including inflow, outflow and storage, does not exist for the system. Inaccurate values for demand and supply are a result of inadequate monitoring; these values effect overall system operation.

Ground Water Contributions to River Flow. Ground water contributions to Missouri River flows, and the effect of ground water withdrawals on the system, were not addressed in the Master Manual. The lack of inclusion of ground water has water management, water supply and water quality implications. In an extended drought, for example, much "tighter" management is required, and this may involve some users on a system relying upon ground water instead of river flows. In the event this scenario occurs, does ground water use replace or supplement acquired rights under the priority system? Operational models of the Master Manual do not consider these scenarios nor investigate the impacts to fundamental doctrines of western water management.

Environmental Considerations. The Master Manual underestimates the potential long-term environmental

impacts of operating scenarios and the problems in the basin. For example, siltation of reservoirs from excessive soil erosion results in reduced reservoir storage, reservoir flushing policies that degrade water quality and reduce fisheries, and transportation of chemical contaminants through the system where they may bio-accumulate. In addition, non-point and point sources of pollution have not been inventoried, nor have the impacts to aquatic life from current operations. Specific environmental issues of concern include:

Temperature. Temperature changes resulting from the system storage facilities, and their impact on aquatic habitat and species composition, have not been undertaken in the Master Manual. This is in contrast to Environmental Impact statements for other major river systems, including the Colorado River system, in which temperature effects have been studied and remedies proposed. Remedies include releasing water from different elevations in the reservoir, and require dam modifications.

Ramping Rates. Ramping rates, peak power production requirements, and impacts on

aquatic systems, and alternative scenarios for ramping rates, have similarly been neglected in the Master Manual studies. Again, this is in contrast to the extensive studies in other river systems, where ramping rates are a fundamental operating component and are linked to other resource objectives.

Existing Damage to Tribal Resources. Federal dam construction and operation have already inundated tribal lands, changed riverine and aquatic habitats, and have already imposed additional constraints on Tribal options with regard to water use, development and economic betterment. No systematic review of these impacts over the watershed have been conducted, nor solutions proposed which would adequately address the development of water without inclusion of the Tribes.

The Master Manual attempts to average environmental considerations over the system, without knowing enough of the details to draw such a generalization. In doing so, the Master Manual tramples upon very real local concerns and is ineffective in providing a framework for

resolution to local or regional environmental problems.

New Sources of Water. Demand for water from the Missouri River system will continue to grow as the 21st Century approaches and unfolds. "New" water will in part come from conservation and improved water management techniques. The Master Manual makes no attempt to address these key issues, however, water conservation is the key to effective management.

Example. Even in a highly contentious river basin such as the Wind River basin, which involved the use of Tribal water resources, a federal, state and tribal interagency task force was established to conduct technical studies to determine the amount of water that could be "made available" through irrigation conservation measures. The study concluded that over 100,000 acre feet of water could be made available through conservation practices permitting all uses even within drought situations, for that very local situation.

The Mississippi River System. Recent flooding along the Mississippi further reinforces the need for system-wide

analysis of the impacts of water management in the Missouri on the conditions in the Mississippi. Additional storage, release policies and land use changes on tributaries, such as the Missouri, could ease flooding on the Mississippi. Similarly, drought conditions on the Mississippi which affect barge traffic could also be eased by the marketing and release of reservoir storage in the Missouri system. The present scope of the Master Manual is ineffective in addressing system-wide water resource realities.

2. The Master Manual does not consider the future, and therefore is ineffective as a planning document.

Future Conditions With Indian Water Rights Implemented.
The system operation with the inclusion of Indian water rights has not been addressed in the Master Manual. This is critical in that Tribal water will likely be dedicated to different purposes than what currently exist in the system now. Tribal water resources use, which is essential to Tribal economic development, will impact other water users over a broad geographic area in the basin.

Future Conditions Given Changes in Water supply and New Management Objectives. There is wide-spread scientific

evidence indicating that regional hydrologic changes, such as receding glaciers, changes in precipitation frequency and amount, and ground water discharge changes, are occurring. These changes may affect the overall water supply availability in the Missouri River system, and require contingency planning and other strategies that will permit system flexibility and adaption. Changes in system operation as a result of water supply changes will have impacts on power production, water quality, and the balance of surface and ground water use, and all system water users.

Example. In the Colorado River, the EIS for Glen Canyon Dam is currently investigating all impacts associated with potential water supply changes, and the impact of changes in the hydrologic conditions of the river system on the environment, power production, suer rights, water marketing, and other values.

Future Conditions With New Technologies. New technologies for water use and conservation may alter demand, supply and distribution systems, which will affect river operations and water rights. New technologies may also change the status of water as "surplus," which will affect current western water law

appropriation doctrine. The Master Manual assumes "status quo" and therefore does not allow the entire system to adapt to changes.

Future Conditions With New Facilities Construction or Retrofitting. New facilities construction, retrofitting of existing structures, and new distribution arrangements cannot be analyzed within the framework of the Master Manual as written. Both scope and time frame of the Master Manual do not permit flexible, futuristic and effective examination of water management potentials in the Missouri River basin.

3. The Master Manual does not provide a system-wide evaluation of power production nor distribution, and the impacts of alternative power production on the regional energy grid.

Systematic Review of Tribal Water Used to Generate Hydroelectricity in the Basin is Urgently Needed. Currently, much of the water that is currently claimed by Tribes is used to generate hydroelectric power. In addition, Tribal lands have been inundated by federal reservoirs. At the same time, Tribal and other rural people are some of the highest rate payers in the United States, with as much as 70 percent of monthly income used to pay utility bills. With water rights in the system

linked to hydropower, Tribal use of reserved rights is also intricately linked to economic development and community betterment. A serious and detailed examination of these relationships is necessary.

Energy Bill Projects May Offer A Vehicle to Address Vertical Energy Integration in the Missouri System. The 1992 Energy Bill provides a framework and funding for studies which address the integration of all sources of power within a system. Such studies address the integrated use of hydropower, coal, oil and gas, and alternative sources of energy such as solar and wind power. Within the context of the Missouri River, water is used to generate regional power, but so is coal, oil and gas; windpower potentials have been investigated. Moreover, Missouri River water is presently used for cooling purposes in thermal processes.

Since changes in river operation will involve changes in power production, an investigation of the impacts of these changes on regional energy production and distribution is advised. The Energy Bill may offer an effective avenue for such work.

4. The Master Manual fails to consider basin-wide water resource management institutional arrangements which would enhance water

management in the entire system. The proposed water management structure does not reflect Tribal administrative authority nor other diverse interest in the region.

Failure to Consider All Basin Interests in the Development of the Master Manual. The process which produced the Master Manual involved several states and no consultation with the 28 tribes in the Missouri River basin. In addition, the failure to study current and alternative institutional arrangements for water management given varying objectives for water use, renders the process incomplete. More participation is required to produce an effective document that has regional support.

Tribal Sovereignty Requires Tribal Control Over Tribal Natural Resources. In the next decade, Tribal water, environmental and other natural resource laws and policies will be developed, according to Tribal priorities and goals for water use and resource development. These new institutions will be broad in geographic distribution, and may offer state and federal water managers a new and comprehensive approach to regional and watershed-wide integrated natural resource development.

Integration of Energy, Environment and Watershed Concerns is a National Trend and Should Be Adopted in the Study of the Missouri River System. Studies of other major river systems, including the Colorado River system, the Columbia River, the Sacramento, and the Rio Grande, have involved a high-level of comprehensive, scientific and policy analysis of river options, and have taken on international significance. The National Academy of Sciences has been actively involved in several studies as a means to assure quality, high-level analysis of issues important to broad regions. Such high-level research and coordination is suggested by the issues in the Missouri River basin. The non-biased and fair approach to Tribal water rights may also require such high-level oversight.

B. Watershed Management Conclusions

The need for a quality, comprehensive assessment of the water resource management issues and potentials in the Missouri River system is great. Without such a comprehensive analysis, Tribal and other water rights will be adversely affected and perhaps never resolved. While the national trend in the analysis of river systems is toward a comprehensive approach, the Master Manual has chosen a narrow scope, aimed at preserving present day status quo. In the process, critical aspects of tribal water rights, water supply, land use, environmental issues, tribal, and water resource

administration have been neglected. This has thus limited water management flexibility in the region.

Already significant funding has been allocated to what is essentially an incomplete process as represented by the Master Manual. To address just tribal issues alone will require several more million dollars. Time is of the essence and prudence requires the efficient use of federal and state dollars to gather all the information necessary to effective decision-making.

IV.

REMEDIES

We have met repeatedly with the Corps of Engineers to present our views on their treatment of our water rights, but no changes in the Corps analysis or presentation have been forthcoming. The Corps has completed the preliminary draft environmental impact statement (PDEIS), part of the process that will result in a preferred plan for operating the Missouri River mainstem reservoirs in the future. This forum does not properly address the water rights of the Indian tribes. We possess property rights in the Missouri River, and those rights must be treated differently than concerns of the general public with interest in the environmental impacts of federal decisions for operating the Missouri River mainstem reservoirs. We need your support for Congressional hearings on this subject and appreciate your offer to hold them.

Senator Inouye, let us emphasize that Standing Rock Sioux and

the other tribes are without an adequate judicial forum to resolve a determination of our water rights. The McCarran Amendment was interpreted by the U.S. Supreme Court in 1983 as conferring jurisdiction over adjudication of Indian water rights to State Courts. The Tribes, therefore, cannot adjudicate their water rights without risking State Court adjudication. In Montana, the State has sued the Indian tribes within its borders to force the tribes into State Court, a forum that the tribes fear for good reason. The Wind River Case in Wyoming, decided in 1986, was a tragedy for the Indian people for reasons that we would be happy to relate to you in a separate correspondence. Likewise, the Acquavella Case in the Yakima River Basin, Washington, has resulted in State Court judgments that deny the Yakimas their day in court and the right to water for future purposes. The Montana tribes have no choice but to submit to State Court jurisdiction or choose some other forum, acceptable to the State of Montana, which the tribes must determine their valuable water rights. In Montana, the only option available is negotiated settlement with the State. The Montana tribes are operating under duress, and the negotiations in this headwater state affect the amount of water remaining available for satisfying the water rights of the downstream tribes, including the Standing Rock Sioux.

As stated, the tribes are reluctant to submit to State Court proceedings to adjudicate their water rights due to recent experiences in Wind River and Yakima. No tribe in Montana favors

proceeding in the case brought by the State of Montana against the tribes. History will find that the negotiations in that state were less than proper and that the tribes were forced to bargain their rights away under threat of litigation.

The tribes are also reluctant to submit to the U.S. Supreme Court on review of State Court proceedings. In the Wind River Case, the U.S. Supreme Court reviewed the State of Wyoming decision and was perhaps one vote short of an opinion that would have rewarded non-Indians for converting Indian water rights to non-Indian use. The Wyoming decision is a tragedy for all of our Indian People. Justice O'Connor disqualified herself from the vote, purportedly because she possesses state-created water rights in Arizona that conflict with reserved Indian water rights. Therefore, had Justice O'Connor voted, the tribes would likely be faced with a decision that non-Indians are entitled to Indian water rights if the non-Indians have used them without proper authority for a long period of time.

This is the crux of the problems with the Master Manual. The Corps of Engineers has refused to acknowledge Indian water rights except where quantified and actually put to use. The Corps would force the tribes to quantify their rights in the only available forums (State Court or state negotiations), and the tribes' water rights would then only be recognized when put to use. The distinction between state-created water rights (doctrine of

appropriation) and Indian reserved water rights (Winters doctrine is that Indian water rights do not have to be used to become full vested, whereas state-created water rights do not exist as full vested until they are used.

Thus, the Corps would perpetuate the problems that the Missouri River tribes have faced for nearly a century, namely that the federal agencies refuse to acknowledge Indian water rights, and non-Indians continue to develop unused Indian water. Moreover, the United States relies on unused Indian water rights (1) to generate electricity in order to repay the cost of building the Missouri River Pick-Sloan dams, (2) to maintain navigation in the Missouri and Mississippi Rivers, and (3) to support threatened and endangered species, such as the least tern and the piping plover. The non-Indians and the federal agencies deny that our water rights exist or claim that development is "too speculative", apparently with the conviction that if our rights are finally adjudicated in State Court or elsewhere, the United States Supreme Court may find that the use by others has been of such long duration that they should not be required to stop their use, and our water rights would not be awarded to us.

All of the tribes of the Missouri River Basin have long sought to develop their water rights. In 1944, when the Pick-Sloan plan was approved by Congress, the tribes expected to divert and use their water supplies in the Missouri River, its tributaries and t

aquifers. The Bureau of Indian Affairs stated that it believed that the interests of the tribes in the irrigation and power features of the Pick-Sloan Plan had been adequately considered. There was great anticipation by the Indians that never developed into water projects. But, surrounding the reservations, the pace of water development by non-Indians quickened. At many locations, non-Indian development had already monopolized the water supply available to the Indian tribes. The St. Mary River had been diverted by the Bureau of Reclamation away from the Blackfeet. Bureau of Reclamation had diverted the waters of the Milk River to projects surrounding the Fort Belknap Indian Reservation. Boysen Reservoir had been built on the Bighorn River, and the water supply was controlled by non-Indians. The Whitney Irrigation Project in Nebraska fully utilized the White River water supply available to the Oglala Sioux at Pine Ridge.

After the 1944 Flood Control Act, the Bureau of Reclamation built the Shadehill Dam and Reservoir upstream from Standing Rock, but Blue Horse Reservoir, intended for the benefit of the Tribe, was never built and our irrigation from that stream was denied. Angostura Reservoir was built on the Cheyenne River and dominates that stream above the Pine Ridge and Cheyenne River Indian Reservations.

Let us summarize the dilemma. First, when the 1944 Flood Control Act was passed, the Indian tribes believed that part of

their Winters doctrine water rights could be developed through the plan. That was not the case. Either the sources of water upon which we rely had already been developed by non-Indians or the Pick-Sloan authorization was used by non-Indians to build projects immediately upstream from our reservations (such as Shadehill on the Grand River), and our projects (such as Blue Horse on the Grand River) were not constructed. Second, the Bureau of Reclamation and Corps of Engineers, representing the trustee, the United States undertook considerable planning and development of the Missouri River and its tributaries investing hundreds of millions of dollars. Those investments have been made in irrigation projects that support non-Indian state-created water rights and the dredging of navigation channels in the Mississippi and Missouri Rivers. Those investments have been made, in most cases, without taking the Winters doctrine into account. Where the Winters doctrine has been recognized, the approach has often been detrimental to the Indian tribes. Both the Department of Interior and the Corps of Engineers have placed unrealistic requirements on recognition on the Winters doctrine as summarized below:

Accordingly, this [agreement] is subject and subordinate to any claims of the Missouri River Basin Indian tribes for Reserved Rights to the use of water . . . which are adjudicated and which have been found to constitute a prior right by a final and non-appealable order of a court of competent jurisdiction.

This brings us to the third point. As previously stated, the tribes have no adequate judicial forum in which to resolve their reserved rights. The State Courts are generally unacceptable

the tribes for obvious reasons, and the United States Supreme Court demonstrated that it may not support the Winters doctrine. Therefore, there is no meaningful appeal to an adverse State Court ruling. The United States Supreme Court has come very close to endorsing the use of Winters doctrine water rights by non-Indians because the Indian tribes were unable to obtain funding appropriations for development of Indian components of the Pick-Sloan Plan. Funding has been absent because the Bureau of Reclamation and the Corps of Engineers assisted in the development of non-Indian projects that relied on unused Winters doctrine water rights and because the Bureau of Reclamation and Corps of Engineers would not recognize Winters doctrine water rights until they were fully adjudicated in courts that the tribes cannot submit to.

At Standing Rock we believe that forced negotiation is an unjust resolution of our Winters doctrine rights to the use of water. But, this is the only remedy made available to the tribes in the Missouri River Basin if we are guided by federal policy makers in the Department of the Interior and elsewhere. We respectfully submit to you, Mr. Chairman, that the Congress of the United States can assist the Missouri River Basin in the protection, preservation, and proper accounting of the Winters doctrine rights to the use of water. Reasonable decision-makers can make sound determinations of the amount of water in the Missouri River, its tributaries and its aquifers that should be reserved for present and future purposes by the Indian tribes.

Federal agencies, such as the Corps of Engineers, can then properly account for the amounts of water reserved for the tribes in the Master Manual and in other planning documents. The Master Manual in its present form encourages the federal agencies and non-Indian water users to continue to rely on unused Winters doctrine water rights. As stated by the Corps in its draft Master Manual EIS:

The Missouri River Basin Indian Tribes are currently in various stages of quantifying their potential future uses of Mainstem System water. It is recognized that these Indian Tribes may be entitled to certain reserved or aboriginal Indian water rights in streams running through and along reservations. Currently, such reserved or aboriginal rights of tribal reservations have not been quantified in an appropriate legal forum or by compact . . . The Study considered only existing consumptive uses and depletions; therefore, no potential tribal water rights were considered. Future modifications to system operations, in accordance with pertinent legal requirements, will be considered as tribal water rights are quantified in accordance with applicable law and actually put to use. (PDEIS, 33-64, May 1993, emphasis supplied.)

As you know, Winters doctrine water rights are reserved for present and future purposes of the tribes, whether in use or not. The Corps is perpetuating the failure of the federal agencies to properly address these existing water rights. When the Corps adopted the basic assumption that the Master Manual would be based only on existing uses of water (e.g., state-created water rights) the Corps ignored the vested water rights of the Indian tribes. The Corps offers a solution that is unacceptable to tribes including Standing Rock. We have no desire to be sued in the McCarran Amendment case and no desire to negotiate our water rights.

with the State, whether under the threat of litigation or not. The only fair and just alternative begins with your oversight and may well lead to new Federal Indian water policy and management institutions.

We need hearings in the Congress of the United States to provide our testimony with regard to this basic, underlying problem in the development of the Master Manual and the Environmental Impact Statement by the Corps. The Environmental Impact Statement, in preliminary draft form is entirely unacceptable for the reasons that (1) it does not address existing Indian water rights in the Missouri River Basin (albeit unadjudicated), and (2) it does not consider any future uses of water.

We are hopeful that the hearings can address possible remedies to the difficulties that the tribes face, including the need for Congressional action to except Indian water rights from McCarran Amendment adjudications consistent with congressional policy announced in the 1992 Western Water Policy Review Act. Remedies may likewise come from the fact that the United States is currently relying upon unused Winters doctrine water rights for generation of hydropower at the six mainstem dams on the Missouri River and for supporting of barge traffic in the nine foot channel of the Missouri River between St. Louis and Sioux City. Moreover, the United States relies on unused Winters doctrine rights for protection of threatened and endangered species. To the extent the

tribes' water rights cannot be restored or to the extent the tribes agree to permit the United States to rely on unused Winter doctrine water rights, solutions between the United States and the tribes may be workable. In this regard we are encouraged by the 102nd Congress which recognized a duty to the Indian tribes with regard to its water rights:

. . . the Federal Government recognizes its trust responsibilities to protect Indian water rights and assist Tribes in the wise use of those resources. (Section 3002(9) Public Law 102-575, 106 Stat. 4600 at 4694)

In conclusion, the operation by the Corps of Engineers of the main stem Missouri River reservoir system severely impacts the Standing Rock Sioux Indian Reservation. The COE operates the system without regard to the Tribe's reserved water rights although those rights amount to a substantial portion of the stored water in the Oahe Reservoir. Currently, this water is utilized for navigation, hydropower generation, irrigation, and recreation in the Missouri basin, without benefit to the Tribe and Tribe members, who remain among the poorest people in the United States.

In response to current drought conditions, the COE is revising its water control manual. The revisions likewise confer consideration of Tribal rights. Unless the U.S. Congress intervenes on behalf of the Standing Rock Sioux and other Indian nations of the Missouri River basin, the resource planning

federal agencies for the twenty-first century shall proceed with consideration of Tribal treaty rights, economic development needs, and environmental quality considerations. Federal bureaucrats, currently accountable to no one, shall plan the Indian people of the Missouri River basin out of existence.

TABLE 1
RANGE OF OPTIONS STUDIED IN
277 NATIONAL ECONOMIC DEVELOPMENT ALTERNATIVES

Permanent Pool Levels (maf)	Water Service Level (12/1-3/15) (kcfs)	Spring and Fall Service Levels (3/15-3/31, Oct., Nov.)	Summer Service Levels (Apr.-Sept.) (kcfs)	Interim System Regulation	Navigation Criteria
18	9	9	9	0 (Existing)	1 (Current)
26	12	12	12	1 (Modified)	2 (Modified)
31	15	15	15		
38	18	18	18		
44		25	25		
48					

TABLE 2
COMPARISON OF MODEL RESULTS⁽¹⁾

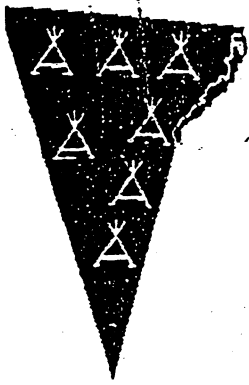
Alternative	Total System Average Annual Flood Control Benefit (\$ million)	Total System Average Annual Water Supply Benefits (\$ million)	Total System Average Annual Hydropower Benefits (\$ million)	Total System Average Annual Navigation Benefit (\$ million)	Total System Average Annual Recreation (\$ million)
Existing operation (ABAAIO)	41.09	544.90	625.52	16.19	48.13
Alternative that gave maximum benefits	41.97	549.31	637.16	16.64	50.30
Alternative that gave minimum benefits	34.84	510.13	613.57	4.32	47.2

⁽¹⁾ From Volume 1, Alternatives Evaluation Report.

TABLE 3
SUMMARY OF BENEFITS UNDER PRESENT
OPERATIONS POLICY (ABAAIO)⁽¹⁾

Source of Benefits	Average Annual Benefits (\$ Million)	Percent of Total
Flood control	41.09	3.2
Water supply	544.90	42.7
Hydropower	625.52	49.0
Recreation	48.13	3.8
Navigation	16.19	1.3

⁽¹⁾ From Volume 1, Alternatives Evaluation Report.



Sisseton-Wahpeton Sioux Tribe

LAKE TRAVERSE RESERVATION

BIG COULEE • BUFFALO LAKE • ENEMY SWIM • HEIPA/VEBLEN • LAKE TRAVERSE • LONG HOLLOW • OLD AGENCY

TRIBAL COUNCIL RESOLUTION NO. SWST-93-046

- WHEREAS, Sisseton - Wahpeton Sioux Tribe of the Lake Traverse Reservation in the State of South Dakota, all or part of which is located in the Missouri River Basin, seeks to address the critical issues of reserved Indian water rights and water management in the Missouri River Basin; and
- WHEREAS, Sisseton - Wahpeton Sioux Tribe holds valuable reserved Winter's doctrine rights to the use of water in the surface waters and ground waters of the Missouri River Basin and seeks to protect, preserve, manage and utilize the amounts of water reserved by the Tribe and the quality of that water resource for present and future generations of the Sisseton - Wahpeton Sioux Tribe; and
- WHEREAS, the Mni Sose Tribal Water Rights Coalition has incorporated, has charter and by-laws and seeks the representation of all Missouri river Basin Tribes in its Coalition, and
- WHEREAS, the Mni Sose Tribal Water Rights Coalition, upon completing its membership drive, will convene in Rapid City, SD sometime in March, when that date is set we will notify Tribes with an announcement to determine collectively and individually, the best and most appropriate means of the tribes of the Coalition to address their rights, titles and interests in the preservation, protection, management and utilization of the Missouri River, its tributaries and its aquifers; and
- WHEREAS, the Coalition seeks to represent 26 tribes of the Missouri River Basin residing in three areas served by the Bureau of Affairs: Billings, Aberdeen and Anadarko; and
- WHEREAS, all tribes of the Missouri River Basin have common objectives, including but not limited to, the following:
1. Recognition of the valuable Winter's doctrine rights to the use of water in the Missouri River, its tributaries and aquifers by the Congress and Executive Branch of the United States.

TRIBAL COUNCIL RESOLUTION NO. SWST-93-046

2. A united Indian voice in the policy-making related to the Missouri River, its tributaries and its aquifers, which voices has equal or greater weight than the federal agencies, states and the Missouri River Basin States association, all of which are currently engaged in litigation or review of the Corps of Engineers Master Manual, as a means of settling the litigation.
3. Participation in the benefits of the Federal Missouri River Basin Pick-Sloan Program, including but not limited to, equitable allocation of the hydropower resources.
4. Management of the water resources to ensure safe drinking water, clean water supplies and economic development of our water resources.

WHEREAS, the Coalition of the Missouri River Basin, would form the largest Indian organization and utilization of Indian water resources, larger by several times than the Columbia River Basin Commission and the Great Lakes Commission; and

WHEREAS, the strength of the Coalition will be sufficient to ensure that litigation and settlement between the states and the United States over issues relating to the Missouri River Basin Cannot be resolved without proper consideration of the rights, titles and interests of the party with greatest interests in the water supplies of the Missouri River Basin, namely the Indian tribes of the Basin.

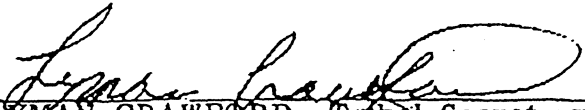
NOW THEREFORE, BE IT RESOLVED, that Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation Joins the Mni Sose Tribal Water Rights Coalition, Inc., and will work as a Coalition member in the first meeting after the present effort to expand membership to determine how best to meet the common and diverse needs of the tribes of the Missouri River, both collectively and individually.

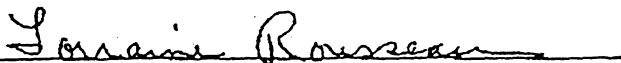
BE IT FURTHER RESOLVED, that the governing body directs its Chairwoman to take all necessary steps to designate David Gill to act on behalf of the tribe in the Coalition.

C E R T I F I C A T I O N

We, the undersigned duly elected Chairwomen and Secretary of the Sisseton-Wahpeton Sioux Tribe, do hereby certify that the above Resolution was duly adopted by the Sisseton-Wahpeton Sioux Tribal Council, which is composed of 18 members, of whom 18 members, constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened, and held at Tiwakan Tio Tipi, Agency Village, South Dakota, on March 5, 1993, by a vote of 13 for, 0 opposed, 0 abstained, 2 absent from vote, 1 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 5 day of March, 1993.


LYMAN CRAWFORD, Tribal Secretary
Sisseton-Wahpeton Sioux Tribe

ATTEST: 
LORRAINE ROUSSEAU, Tribal Chairwoman
Sisseton-Wahpeton Sioux Tribe





TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

TURTLE MOUNTAIN TRIBAL OFFICE

P.O. BOX 900
BELCOURT, NORTH DAKOTA 58316

(701) 477

July 28, 1993

John E. Shaufelberger
Colonel, Corps of Engineers
Division Engineers
Missouri River Division
P.O. Box 103, Downtown Station
Omaha, Nebraska 68101-0103

Re: PDEIS for Missouri River Master Water Control Manual and Review

Dear Colonel Shaufelberger:

I am writing to you to express serious concerns over the current Preliminary Draft Environmental Impact Statement (PDEIS) for the Missouri River Master Water Control Manual Review and Update. Our Tribe, along with several other federally recognized Indian Tribes in the Missouri River Basin, have considerable reserved water rights in the Missouri River, and we are important stakeholder's in the outcome of this process. Our Indian water rights are directly impacted by the management practice and policies of the Corps and our water rights have been utilized by the Corps for many years without our consent to serve other national interest such as the generation of hydropower and navigation. For this reason, the Indian Tribes are highly concerned about the actions of your agency with respect to the Missouri River system.

It is my understanding that the PDEIS has been prepared by your agency with no consultation with the Indian Tribes in the Missouri River Basin. I can attest to the fact that we did not receive a formal request or invitation from your agency to participate in the development of this document. In my opinion, absent meaningful participation by the Indian Tribes in the Missouri River Basin the draft PDEIS is a flawed document. For these reasons, I urge you to reconsider the actions of your agency and to take immediate measures to rectify this situation.

Although I am aware that your agency has been in contact with the Mni-Sose Inter-Tribal Water Rights Coalition and has invited that organization to participate in the August hearings on the PDEIS, I am concerned that your efforts are "too little too late." It is also disturbing to realize that your agency has invested tremendous resources in the development of an operating plan for the Missouri River system without prior consultation and involvement with one of the major stakeholder's, the Indian Tribes. Now it appears that only after-the-fact has your agency provided an opportunity for a tribal organization to participate, an organization which clearly does not have financial technical resources comparable to your agency.

A1-163

In closing, we support the call by the Missouri River Basin Tribes to reject the Master Manual PDEIS and support the request for congressional oversight hearings to address the Federal Government's unfulfilled obligations to the Indian Tribes with respect to our reserved water rights. Our Tribe also joins with the other Tribes in the Missouri River Basin in citing the failure of the process utilized by the Corps because it excluded meaningful participation by the Tribes, and because it will have a detrimental impact on Indian water rights.

I hope that our concerns are given serious consideration and that you will do your best to respond to the interests of the Indian Tribes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard LaFromboise', with a stylized flourish at the end.

Richard "Jiggers" LaFromboise
Tribal Chairman

Santee Sioux Tribe of Nebraska

Phone: (402) 857-3302



Route #2
Niobrara, Nebraska 68760

July 29, 1993

John E. Shaufelberger
Colonel, Corps of Engineers
Division Engineers
Department of Army
Missouri River Division
P.O. Box 103, Downtown Station
Omaha, Nebraska 68101-0103

RE: PDEIS for Missouri River Master Water Control Manual and Review

Dear Colonel Shaufelberger:

I am writing to you to express serious concerns over the current Preliminary Draft Environmental Impact Statement (PDEIS) for the Missouri River Master Water Control Manual Review and Update. Our tribe, along with several other federally recognized Indian tribes in the Missouri River Basin, are important stakeholders in the outcome of this process. Our Indian water policies of the Corps and our water rights have been utilized by the Corps for many years without our consent to serve other national interests such as the generation of hydropower and navigation. For this reason, the Indian Tribes are highly concerned about the actions of your agency with respect to the Missouri River system.

It is my understanding that the PDEIS has been prepared by your agency with no consultation with the Indian Tribes in the Missouri River Basin. I can attest to the fact that we did not receive a formal request or invitation from your agency to participate in the development of this document. In my opinion, absent meaningful participation by the Indian Tribes in the Missouri River Basin the draft PDEIS is a flawed document. For these reasons, I urge you to reconsider the actions of your agency and to take immediate measures to rectify this situation.

A1-165

PDEIS for Missouri River Master Water Control Manual & Review
Page 2:

Although I am aware that your agency has been in contact with the Mni Sose Inter-Tribal Water Rights Coalition and has invited that organization to participate in the August hearings on the PDEIS, I am concerned that your efforts are "too little too late." It is also disturbing to realize that your agency has invested tremendous resources in the development of an operating plan for the Missouri River system without prior consultation and involvement with one of the major stakeholders, the Indian Tribes. Now it appears that only after-the-fact has your agency provided an opportunity for a tribal organization to participate, an organization which clearly does not have financial and technical resources comparable to your agency.

In closing, we support the call by the Missouri River Basin Tribes to reject the Master Manual PDEIS and support the request for Congressional oversight hearings to address the Federal Government's unfulfilled obligations to the Indian Tribes with respect to our reserved water rights. Our tribe also joins with the other tribes in the Missouri River Basin in citing the failure of the process utilized by the Corps because it excluded meaningful participation by the tribes, and because it will have a detrimental impact on Indian water rights.

I hope that our concerns are given serious consideration and that you will do your best to respond to the interests of the Indian tribes.

Sincerely,



Richard Kitto
Chairman
Santee Sioux Tribe

RLK/km



MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation

HC3 Box 2 • New Town, North Dakota 58763-9402

TRIBAL BUSINESS COUNCIL
(701) 627-4781
Fax (701) 627-3805

CHAIRMAN
Wilbur D. Wilkinson

VICE CHAIRMAN
Ivan Johnson
Mandaree
(701) 759-3377

SECRETARY
John "Jack" Rabbithead, Jr.
Parshall/Lucky Mound
(701) 862-3841

TREASURER
Roger Bird Bear
Four Bears

COUNCIL MEMBER
Austin Gillette
White Shield
(701) 743-4244

COUNCIL MEMBERS
Jim Mossett
Twin Buttes
(701) 938-4403

COUNCIL MEMBER
George Fast Dog
New Town / Little Shell
(701) 627-3484

July 30, 1993

Mr. John E. Schauffelberger
Colonel, Corps of Engineers
Division Engineers
Department of Army
Missouri River Division
P.O. Box 103, Downtown Station
Omaha, Nebraska 68101-0103

Re: PDEIS for Missouri River Master Water Control
Manual and Review

Dear Colonel Schauffelberger:

The Three Affiliated Tribes wishes to express serious concerns over the Preliminary Draft Environmental Impact Statement (PDEIS) for the Missouri River Master Water Control Manual Review and Update. Our tribes, along with several other federally recognized Indian tribes within the Missouri River Basin, have water rights in the Missouri River. Our Indian water rights are directly impacted by the management practice and policies of the Corps. For many years, the Corps has utilized our water rights without Indian consent to serve others.

It is my understanding that the PDEIS has been prepared by your agency with no consultation with the Indian Tribes. I can attest to the fact that we did not receive a formal request or invitation to participate in the development of this document. In my opinion, absent meaningful participation by the Tribes in the Missouri River Basin, the draft PDEIS is a flawed document. For these reasons, I urge you to reconsider the actions of your agency and to take immediate measures to rectify this situation.

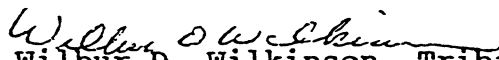
Page Two (2)
J.E. Shaufelberger ltr.
July 30, 1993

Although I am aware that your agency has been in contact with the Mni Sose Inter-Tribal Water Rights Coalition and has invited that organization to participate in the August hearings on the PDEIS, I am concerned that your efforts are "too little too late." It is also disturbing to realize that your agency has invested tremendous resources in the development of an operating involvement with one of the major stakeholders, the Indian Tribes. Now it appears that only after-the-fact has your agency provided an opportunity for a tribal organization to participate, an organization which clearly does not have financial and technical resources comparable to your agency.

In closing, we support the call by the Missouri River Basin Tribes to reject the Master Manual PDEIS and support the request for Congressional oversight hearings to address the Federal Government's unfulfilled obligations to the Indian Tribes with respect to our reserved water rights. Our tribe also joins with the other tribes in the Missouri River Basin in citing the failure of the process utilized by the Corps because it excluded meaningful participation by the tribes, and because it will have a detrimental impact on Indian water rights.

I hope that our concerns are given serious consideration and that you will do your best to respond to the interests of the Indian tribes.

Sincerely,


Wilbur D. Wilkinson, Tribal Chairman
Fort Berthold Reservation
Three Affiliated Tribes

Ponca Tribe of Nebraska

P.O. Box 288
Niobrara, NE 68760

402 857-3391
FAX: 402 857-3736

RECEIVED
AUG 17 1993

August 10, 1993

Am

Mni Sose Intertribal Water
Rights Coalition
P.O. Box 266
Rapid City, SD 57709

Dear Sir:

On August 3, 1993 the Interim Council of the Ponca Tribe unanimously voted to support the Mni Sose Intertribal Water Rights Coalition in their effort for withdrawal of the Master Manual until all Tribes involved have input regarding the matter.

Respectfully,

Deborah Wright

Deborah Wright, Chairperson
Ponca Tribe of Nebraska

cc: TC

LUNDERMAN, SR.
President

WILSON
Vice-President

Rosebud Sioux Tribe

ROSEBUD INDIAN RESERVATION
ROSEBUD, SOUTH DAKOTA 57570

P.O. BOX 430
Phone 605-747-2381 - Fax 605-747-2243

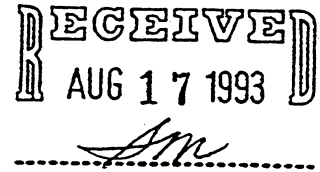
CHARLES WHITE PIPE, JR.
Treasurer

GERRI GORDAN
Secretary

JOHN ARCOREN, SR.
Sargeant at Arms

August 11, 1993

John E. Schaufelberger
Colonel, Corps of Engineers
Civilian Engineers
Department of Army
Missouri River Division
P.O. Box 103, Downtown Station
Omaha, Nebraska 68101-0103



Re: PDEIS for Missouri River Master Water Control
Manual and Review

Dear Colonel Schaufelberger:

It has been brought to the attention of the Rosebud Sioux Tribe that a Preliminary Draft has been completed of the Environmental Impact Statement (EIS) for the Missouri River Master Water Control Manual Review and Update. It has also been indicated to the tribe that tribes have not been recognized by acknowledgement of their water rights in the draft. It seems that the tribes are being forced into having to quantify their water rights before they can be included in the master manual.

It is the Rosebud Sioux Tribe's position that the tribe or tribes should not have to quantify their water rights before being allocated a portion of the water that is under the control of the Corps of Engineers. If the tribes were allowed adequate representation in the development of the master manual, the tribes would have insured themselves a place in the master manual.

Rosebud Sioux Tribe has been one of the three original tribes who organized the Mnisose Intertribal Water Rights Coalition to do exactly what is stated above. The Coalition, whose membership includes Rosebud, is directed to insure that the tribes as a group have a strong voice in these matters. The position expressed by the Mnisose Coalition is fully supported by Rosebud Sioux Tribe, and Rosebud Sioux Tribe as its own autonomous tribe will also pursue the same principles in unity with the other tribes.

The Rosebud Sioux Tribe, therefore, rejects the Master Manual Review process and instead seeks a Congressional oversight hearing on the matter. This letter of support is hereby submitted to the Mnisose Intertribal Water Rights Coalition.

Sincerely,



Alex J. Lunderman, Sr.
President, Rosebud Sioux Tribe
Rosebud, SD 57570

A1-171

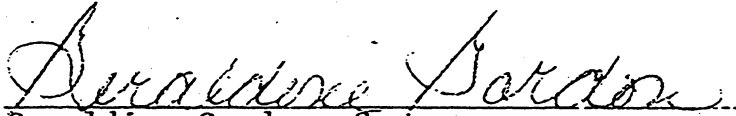
ROSEBUD SIOUX TRIBE
Resolution No. 93-190

- WHEREAS, the Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 and all pertinent amendments thereof; and
- WHEREAS, the Rosebud Sioux Tribe is governed by a Tribal Council made up of elected representatives who act in accordance with the powers granted to it by its Constitution and By-Laws, and
- WHEREAS, in the Preliminary Draft of the Environmental Impact Statement (PDEIS), the Corps of Engineers states: "Recognize(s) that these Indian Tribes may be entitled to certain reserved or aboriginal Indian Water rights in streams running or along reservations...The study considered only existing consumptive uses and depletions; therefore, no potential tribal water rights are considered. Future Modifications in system operations, in accordance with pertinent legal requirements, will be considered as tribal water rights are quantified in accordance with applicable law and actually put to use." (PDEIS, 3-64) and
- WHEREAS, the Corps of Engineers fails to understand the nature of Indian Water Rights, reserved under the WINTERS doctrine, and makes it very clear that it considers Indian water right to be a questionable proposition at best, and that its management scheme for the mainstream of the Missouri River need not take these rights into consideration, and
- WHEREAS, significantly, Indian water rights are not included in the models through which the mainstream reservoir system is operated, this non-inclusion violates WINTERS doctrine water rights as well as treaty rights of certain tribes, and
- WHEREAS, the omission by the Corps of Engineers of consideration of Indian water rights in the PDEIS reflects the more general attachment on Indian water rights, by federal and state water agencies and courts. now
- THEREFORE BE IT RESOLVED THAT, Rosebud Sioux Tribe joins the Mnisose Inter-Tribal Water Rights coalition in rejecting the PDEIS as a legal or meaningful resource management instrument tool, and
- BE IT FURTHER RESOLVED THAT The Rosebud Sioux Tribe respectfully requests that the United States Congress investigate the resource management in the Missouri River basin by the executive branch, and the effect of such management on the Indian nations in the basin, through detailed oversight hearings as proposed by the Mni Sose Intertribal Water Rights coalition.

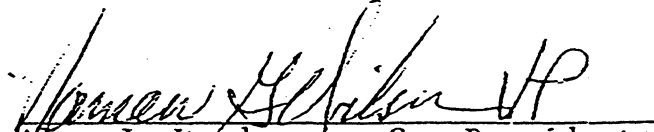
*** CERTIFICATION ***

This is to certify that the above Resolution No. 93-190 was duly passed by the Rosebud Sioux Tribal Council in session on August 12, 1993, by a vote of thirteen (13) in favor; None (0) opposed and None (0) not voting. The said resolution was adopted pursuant to authority vested in the Council. A quorum was present.

A T T E S T :



Geraldine Gordon, Secretary
Rosebud Sioux Tribe



Alex J. Lunderman, Sr., President
Rosebud Sioux Tribe

August 18, 1993

John E. Shaufelberger
Colonel, Corps of Engineers
Division Engineers
Department of Army
Missouri River Division
P.O. Box 103, Downtown Station
Omaha, NE 68101-0103

Re: PDEIS for Missouri River Master Water Control Manual and Review

Dear Colonel Shaufelberger:

I am writing to you to express serious concerns over the current Preliminary Draft Environmental Impact Statement (PDEIS) for the Missouri River Master Water Control Manual Review and Update. The Winnebago Tribe, along with several other federally recognized Indian tribes in the Missouri River Basin, has considerable reserved water rights in the Missouri River, and we are important stakeholders in the outcome of this process. Our Indian water policies of the Corps and our water rights have been utilized by the Corps for many years without our consent to serve other national interests such as the generation of hydropower and navigation. For this reason, the Indian Tribes are highly concerned about the actions of your agency with respect to the Missouri River system.


It is my understanding that the PDEIS has been prepared by your agency with no consultation with the Indian Tribes in the Missouri River Basin. I can attest to the fact that we did not receive a formal request or invitation from your agency to participate in the development of this document. In my opinion, absent meaningful participation by the Indian tribes in the Missouri River Basin, the draft PDEIS is a flawed document. For these reasons, I urge you to reconsider the actions of your agency and to take immediate measures to rectify this situation.

Although I am aware that your agency has been in contact with the Mni Sose Inter-Tribal Water Rights Coalition and has invited that organization to participate in the August hearings on the PDEIS, I am concerned that your efforts are "too little, too late." It is also disturbing to realize that your agency has invested tremendous resources in the development of an operating plan for the Missouri River system without prior consultation and involvement with one of the major stakeholders, the Indian Tribes. Now it appears that only after-the-fact has your agency provided an opportunity for a tribal organization to participate, an organization which clearly does not have financial and technical resources comparable to your agency.

In closing, we support the call by the Missouri River Basin Tribes to reject the Master Manual PDEIS and support the request for Congressional oversight hearings to address the Federal Government's unfulfilled obligations to the Indian Tribes with respect to our reserved water rights. The Winnebago Tribe also joins with the other tribes in the Missouri River Basin in citing the failure of the process utilized by the Corps because it will have a detrimental impact on Indian water rights.

I hope that our concerns are given serious consideration and that you will do your best to respond to the interests of the Indian tribes.

Sincerely,



John Blackhawk, Chairman
Winnebago Tribe of Nebraska

RESPONSE TO
MISSOURI RIVER MASTER WATER CONTROL MANUAL PDEIS
REVIEWED AND UPDATED BY U.S. ARMY CORPS OF ENGINEERS

SEPTEMBER 1993

BY:

MNI SOSE INTERTRIBAL WATER RIGHTS COALITION
818 E. St. Andrew Street
Rapid City, SD 57709

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1. EXECUTIVE SUMMARY

The Missouri River, its tributaries and the aquifers within the basin are life itself to the Indian nations that reside there. The tribes have a cultural and spiritual relationship with the waters that rise within the Missouri River Basin, join the Mississippi River and flow into the Gulf of Mexico. It is not the intent here to present the written or unwritten significance of the waters of the basin for cultural and religious purposes. Tribal elders can relate the significance of this lifeblood, this sustaining force far better than one could hope for in this presentation.

It is important, however, for readers of the Mni Sose response to the Master Water Control Manual to understand that to divide the Missouri River, its tributaries and the aquifers of the basin into state, federal and private interests and to assign National Economic Development (NED) benefits defies our concepts of the insintrinsic values of the water reserved by our forefathers and engrained in our Indian cultural and religion. Likewise, to ignore our legal entitlements to water and to deny the development of self-sustaining economies within our reservations defies the treaties, executive orders, congressional acts, and case law that were developed through centuries to preserve and protect our resources. It is with concern over cultural, spiritual, economic and environmental impacts on our waater that we address this document to the Corps of Engineers. Our values and our rights to the use of water have been systematically ignored in the Preliminary Draft Environmental Impact Statement (PDEIS) for the Missouri River Master Water Control Manual.

Our water rights and their suppression are discussed in Chapters 2 and 3 of this document. The hydrology of the Missouri River used to determine the impacts of 307 alternatives for operating the Missouri River is inappropriate for the simple reason that it does not account for vested reserved rights to the use of water of the 28 Indian tribes of the Missouri River Basin. The Corps hydrologic model only considers the present (1990 level) of depletions. In doing so, the Corps ignores the decreed/settled and undecreed/unsettled rights to the use of water of the Indian tribes.

The Mni Sose Intertribal Water Rights Coalition corresponded with the Corps during preparation of the PDEIS for the purpose of seeking the inclusion of Indian reserved water rights in the Corps hydrologic model. That notion was rejected by the Corps, which was willing to present determination of future water requirements by the respective tribes but was unwilling to account for those water rights in the hydrologic model and to address their impacts on the various alternatives.

We join in the objections of the State of Iowa to the Master Control Manual which is as follows:

The PDEIS does not predict the depletions or estimate the availability of water in the system during the entire period this Master Manual is to be in effect. Instead, its analysis is based on 1990 depletions...This does not include likely future depletions,

including, for example, the Fort Peck Tribal compact by which that tribe seeks authority to divert up to 1,000,000 acre feet of water per year. July 21, 1993 letter to Col. John Schaufelberger from J. Edward Brown, Iowa State Water Coordinator.

The evaluation of future depletions should not be limited to the Fort Peck tribe, but to all tribes of the Missouri River Basin. To deny existence of Indian water rights unless adjudicated or settled by compact fails to meet NEPA tests for adequacy of analysis and fails to protect and preserve our water rights as required by the trustee United States.

In the absence of recognition of Indian water rights by the Corps in its Master Water Control Manual, agencies of the United States, the states and private water users will continue to rely upon the vested water rights of the Missouri River Basin tribes. There will be no effort on the part of the United States to assist the tribes in the development of viable economies that rely upon the use of the tribes' *Winters* doctrine rights. There will be a continuation of the practices of the agencies of the United States, the states and private water users to proceed with future operations and future development without protecting and preserving *Winters* doctrine rights to the use of water.

While there is a trust relationship between the United States and the tribes and Congressional direction to the federal government to recognize its trust responsibilities to protect Indian water rights and assist tribes in the wise use of those resources, there is a continuing failure to do so. The Secretary of the Interior has been the agent of the United States with the greatest opportunity to exercise the responsibilities of the United States to the Indian tribes. All agencies, including the Corps of Engineers, have a trust responsibility. However, it is of considerable disappointment that the Office of the Secretary of the Interior addressed a July 14, 1993 letter to the acting Assistant Secretary of the Army over the signature of Jonathan P. Deason, an Interior official with considerable Indian reserved water rights experience, and that this letter did not address in any way the failures of the PDEIS to address Indian water rights.

Further evidence of the lack of intent to properly address Indian water rights is manifested in the review of the comments by the State of Montana and the State of Wyoming. Montana has developed a compact with the Fort Peck tribes and with the Northern Cheyenne Tribe. The July 14, 1993, letter from Marc Racicot, Montana's Governor, to Colonel Schaufelberger calls for addressing tribal water rights quantified in Montana and Wyoming but does not seek to address undecreed/unsettled water rights in Montana. Moreover, the Montana statement places State statutes that call for future development of State-created water rights ahead of the reserved rights of the Montana tribes that have not entered into compact with the State of Montana. Clearly, Montana has no intent to recognize Indian water rights until adjudicated in its McCarran Amendment proceeding or settled by compact; and the Corps has adopted the Montana view. While Montana complains that only 1/3 of the system economic benefits accrue to the upper basin, there is no call in the Montana comments to address the loss of economic benefits on the Montana Indian reservations.

The PDEIS places considerable emphasis on the differences in benefits between the upper and lower basin. However, the PDEIS fails to address the economic and environmental impacts on the Missouri River Basin reservations stemming from continued reliance by the United States upon the tribes reserved *Winters* doctrine rights to the use of water. The present and future impact of continued reliance by the United States on unused *Winters* doctrine water rights must be presented in the PDEIS.

The PDEIS presents the National Economic Development (NED) benefits of the 307 alternatives, and more particularly, the seven alternatives selected for closer examination. The PDEIS identifies current NED benefits, based on the present Master Control Manual operations, at \$1.277 billion annually. It is respectfully submitted that the PDEIS is inadequate unless the benefits are separated into those produced by the reserved rights of the Missouri River Basin Indian tribes and the surplus waters of the United States. Without division of the NED benefits into those two sources, it is not possible to determine the reliance of the United States on unused reserved water rights of the Indian tribes to produce NED benefits. To the extent the tribes are producing NED benefits, they should share in those benefits.

A trust assessment is needed in the PDEIS to determine the impact of the Master Water Control Manual on the responsibilities of the United States to perform as a trustee for the Missouri River Basin Indians.

The Corps has failed to properly assess the values of navigation enhancement on the Mississippi River. A reasonable and prudent alternative for the PDEIS is full examination of the capability of the Missouri River system to benefit the Mississippi River system, consistent with Indian reserved water rights.

The Corps has understated the value of hydropower benefits on the mainstem system of dams by using the value of constructing and operating new thermal facilities to replace the power produced by the mainstem hydropower system. Improvement in hydropower values is needed.

The Mni Sose Intertribal Water Rights Coalition is grateful for the opportunity provided by the Corps to comment upon its PDEIS for the Missouri River Master Control Manual. While we express concerns over the failure to properly treat our *Winters* doctrine rights to the use of water in the PDEIS, matters that cannot be lightly dismissed, we commend the Corps for providing the Missouri River Basin tribes with the opportunity to comment on an equal level with the states and the agencies of the United States. The tribal governments are sovereigns, and the Corps has departed from past practices by requesting our comments in the same manner as those comments are requested from other governments within the United States.

2. NATURE OF THE *WINTERS* DOCTRINE RIGHTS TO THE USE OF WATER

The Corps makes only passing references to Indian Water Rights. Nonetheless, the Corps' flawed comments injuriously misrepresent the nature and scope of Indian Water Rights. In essence, while the Corps' PDEIS concedes that such rights "may" exist, it suggests that the Corps won't really know for sure until such rights are quantified, either in an appropriate legal forum or by compact. The Corps is wrong both on the facts and the law. PDEIS 3-64.

2.1 The Facts

There are 28 American Indian Tribes which reside within the watershed of the Missouri River. These 28 Tribes control approximately 15 million acres of land. These reservations were set aside by the Indians for the development of permanent tribal homelands. These lands have reserved water rights for the arts of civilization, including critical domestic, municipal, industrial, manufacturing, agricultural, religious, cultural and environmental purposes, among others.

2.2 The Law

As the original sovereigns and proprietors of this region, the American Indian Tribes historically exercised total dominion and control over the area's lands and waters. These American Indian Tribes were subsequently compelled to relocate to far smaller reservations, largely consisting of desert and arid land areas. Without water, these Tribes could not possibly undertake to develop economically viable homelands which their reservations were intended to become. Accordingly, the law has recognized that the Tribes reserved sufficient quantities of water as necessary to service the ultimate needs of the lands. These are fully vested, presently perfected property rights. Unlike state-created rights, such rights do not require prior utilization in order to be valid. Moreover, the law recognizes that water rights issued under the state law of prior appropriation can only be acquired subject to existing rights such as those owned by the Tribes.

2.3 The Corps' Default

All agencies of the United States government owe clear trust obligations to the Tribes including the Army Corps of Engineers. These obligations require the United States to protect Indian Water Rights and to assist the Tribes in their wise use. P.L. 102-575, 106 Stat. 4600. By ignoring the true nature and scope of the Tribes' rights, the Corps has defaulted in its role as trustee. Moreover, by actually impairing the Tribes' equities, it has taken action which violates the fiduciary trust obligations of the United States.

2.4 The Impact of the Corps' Default

The Corps' PDEIS has failed to recognize the unique nature and broad scope of Indian Water Rights. This failure will impair the Tribes' ability to effectively protect and advance their

water interests. At the same time, it will induce non-Indian water users to develop an artificially high level of reliance upon continuation of the status quo. Neither of these outcomes is acceptable. The bottom line is that American Indian families continue to haul drinking water while the Corps releases water from its massive reservoirs in order to enhance navigation. American Indian consumers in the Missouri River Basin are charged higher rates for electrical energy with lower ability to pay than their non-Indian counterparts who pay lower rates and have greater ability to pay. American Indians do not participate equitably in low cost federal power programs.

The Corps' failure to account for Indian Water Rights requires that the PDEIS be redone so as to fully consider and incorporate all tribal water interests, whether adjudicated or settled by compact.

2.5 Pertinent *Winters* Doctrine Cases

The *Winters* reserved water rights doctrine was recognized in 1908 by the United States Supreme Court, reserving tribal waters to the reservations. The genesis of these rights can be traced back through history.

King George proclaimed that the title to the land and water resources were reserved by the American Indians as early as 1763. By 1832 the United States Supreme Court recognized the property rights of Indians in Worcester v. Georgia:

[T]he nation making the discovery...[had] sole right of acquiring the soil and making settlements on it....it regulated the right given by discovery among the European discoverer, but could not affect the rights of those already in possession either as aboriginal occupants or as occupants by virtue of a discovery made before the memory of man...this was the exclusive right of purchasing such lands as the natives were willing to sell. The Crown could not be understood to grant what the Crown did not affect to claim; nor was it so understood. 6 P 515.

This same principle appeared three quarters of a century later in the U.S. Supreme Court case relating to the Yakima Indians in United States v. Winans, 198 U.S. 371:

In other words, the treaty was not a grant of rights to the Indians, but a grant of rights from them--a reservation of those not granted.

In Winters v. United States, 207 U.S. 564, 576 the Supreme Court stated:

The Reservation was a part of a very much larger tract which the Indians had the right to occupy and use and which was adequate for the habits and wants of a nomadic and uncivilized people. It was the policy of the Government, it was the desire of the Indians, to change those habits and to become a pastoral and civilized people. If they should become such the original tract was too extensive, but a smaller tract would be adequate

with a change of conditions. The lands were arid and, without irrigation, were practically valueless.

The power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied and could not be.

That the Government did reserve them we have decided, and for a use which would be necessarily continued through years. This was done May 1, 1888, [at Fort Belknap] and it would be extreme to believe that within a year [when the state of Montana was created] Congress destroyed the reservation and took from the Indians the consideration of their grant, leaving them a barren waste—took from them the means of continuing their old habits, yet did not leave them the power to change to new ones.

The *Winters* Doctrine was applied to Ahtanum Creek, tributary to the Yakima River and northern boundary of the Yakima Indian Reservation in United States v. Ahtanum Irrigation District, 236 F. 2d 321, 327, 337 (1956):

*The record here shows that an award of sufficient water to irrigate the lands served by the Ahtanum Indian irrigation project system as contemplated in the year 1915 would take substantially all of the waters of Ahtanum Creek. It does not appear that the waters decreed to the Indians in the *Winters* case operated to exhaust the entire flow of the Milk River, but, if so, that is merely the consequence of it being a larger stream. As the *Winters* case, both here and in the Supreme Court, shows, the Indians were awarded the paramount right regardless of the quantity remaining for the use of white settlers. Our *Conrad Inv. Co. Case*, *supra*, held that what the non-Indian appropriators may have is only the excess over and above the amounts reserved for the Indians. It is plain that if the amount awarded the United States for the benefit of the Indians in the *Winters* Case equaled the entire flow of the Milk River, the decree would have been no different (Emphasis supplied).*

These concepts were further advanced in Arizona v. California, 373 U.S. 546, 596-601 (1963):

The Master found as a matter of fact and law that when the United States created these reservations or added to them, it reserved not only land but also the use of enough water from the Colorado [River] to irrigate the irrigable portions of the reserved lands. The aggregate quantity of water which the Master held was reserved for all the reservations is about 1,000,000 acre-feet, to be used on around 135,000 irrigable acres of land.

It is impossible to believe that when Congress created the great Colorado River Indian Reservation and when the Executive Department of this Nation created the other reservations they were unaware that most of the lands were of desert kind--hot scorching sands--and that water from the river would be essential to the life of the Indian people and to the animals they hunted and the crops they raised. We follow it [Winters] now and agree that the United States did reserve the water rights for the Indians effective as of the time Indian Reservations were created. This means, as the Master held, that these water rights, having vested before the Act [Boulder Canyon Project Act] became effective on June 25, 1929, are present perfected rights' and as such are entitled to priority under the Act. We also agree with the Master's conclusion as to the quantity intended to be reserved. He found that water was intended to satisfy the future as well as present needs of the Indian reservations.... We have concluded, as did the Master, that the only feasible and fair way by which reserved water for the Reservations can be measured is irrigable acreage. The various acreage of irrigable land which the Master found to be on the different reservations we find to be reasonable.

2.6 General Nature of Attacks on Winters Doctrine.

Notwithstanding the above, in practice, Congress, the executive branch and the judiciary have 1) limited Indian reserved water rights, 2) suppressed development of Indian reserved water rights, and 3) permitted reliance of federal, state, and private interests on Indian water, contrary to trust obligations (e.g. "how best to transfer Indian lands and resources to non-Indians".)

With an opportunity to study the history of the Winters rule as it has stood now for nearly 50 years, we can readily perceive that the Secretary of the Interior, in acting as he did, improvidently bargained away extremely valuable rights belonging to the Indians.... Viewing this contract as an improvident disposal of three quarters of that which justly belonged to the Indians, it cannot be said to be out of character with the sort of thing which Congress and the Department of the Interior has been doing throughout the sad history of the Government's dealings with the Indians and Indian tribes. That history largely supports the statement: From the very beginnings of this nation, the chief issue around which federal Indian policy has revolved has been, not how to assimilate the Indian nations whose lands we usurped, but how best to transfer Indian lands and resources to non-Indians. 236 F. 2nd 321, 337.

2.7 McCarran Amendment.

The Tribes of Mni Sose Coalition view the McCarran Amendment as a device to transfer Indian water resources to non-Indians. The McCarran Amendment interpretation by the U.S. Supreme Court is believed to be in error and is known to be unjust. The discussion of the McCarran Amendment here is intended to show why the tribes oppose state court adjudications and negotiated settlements under the threat of state court adjudication.

In 1952 the McCarran Amendment, 43 U.S.C. 666 (a), was enacted as follows:

Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system of other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or in the process of acquiring water rights by appropriation under State law, by purchase, by exchange or otherwise, and the United States is a necessary party to such suit.

The McCarran Amendment has been interpreted as subjecting Indian water rights to adjudication in state courts. Arizona v. San Carlos Apache Tribe, 463 U.S. 545,564,573 (1981) held:

We are convinced that, whatever limitation the Enabling Acts of federal policy may have originally placed on State Court jurisdiction over Indian water rights, those limitations were removed by the McCarran Amendment.

In dissent however, Justice Stevens stated:

To justify virtual abandonment of Indian water rights claims to the State Courts, the majority relies heavily on Colorado River Water Conservancy District, which in turn discovered an affirmative policy of federal judicial abdication in the McCarran Amendment. I continue to believe that Colorado River read more into that amendment than congress intended....Today, however, on the tenuous foundation of a perceived Congressional intent that has never been articulated in statutory language or legislative history, the Court carves out a further exception to the virtually unflagging obligation of Federal courts to exercise their jurisdiction. The Court does not--and cannot--claim that it is faithfully following general principles of law....That Amendment is a waiver, not a command. It permits the United States to be joined as a defendant in state water rights adjudication; it does not purport to diminish the United States' right to litigate in a federal forum and it is totally silent on the subject of Indian tribes' rights to litigate anywhere. Yet today the majority somehow concludes that it commands the Federal Courts to defer to State Court water right proceedings, even when Indian water rights are involved.

2.8 Western States McCarran Amendment Indian Water Right Adjudications.

In Arizona, Montana, and other states, general water right adjudications to quantify *Winters* Doctrine rights are occurring. For example in the State of Montana:

- (1) The State of Montana sued all tribes in the State in a McCarran Amendment proceeding.
- (2) The State of Montana established a Reserved Water Rights Compact Commission. The purpose of the Commission is to negotiate the *Winters* doctrine rights of the Montana tribes.

- (3) The Department of Interior has adopted a negotiation policy for the settlement of Indian water rights. The U.S. Department of Interior has a negotiation team which works with the Montana Reserved Water Rights Compact Commission and Indian Tribes forced by the adjudication in State Court to negotiate.
- (4) The Department of Interior makes all necessary funding available to any tribe willing to undertake negotiations. A tribe refusing to negotiate cannot obtain funding to protect and preserve its *Winters* doctrine water rights.
- (5) Upon reaching agreement between the State of Montana and an Indian tribe, Congressional staff are assigned to develop legislation in the form of an Indian water rights settlement that may or may not involve authorization of Federal appropriations to develop parts of the amount of Indian water agreed upon between the Tribe and the State or for other purposes.
- (6) In the absence of the desire of a Tribe to negotiate, the State of Montana proceeds to prosecute its McCarran Amendment case against the Tribe.

This process utilizes threats of litigation to accomplish negotiated settlements of *Winters* Doctrine Indian water rights. This process is held out to be a success by the state and federal governments. However, it is no better than the taking of the Black Hills from the Great Sioux Nation, the taking of the Little Rocky Mountains from the Fort Belknap Reservation, and the taking of Glacier Park from the Blackfeet.

Recently, in the Wind River adjudication, 753 P. 2d 76, 94-100 (Wyo. 1988), the State of Wyoming utilized the McCarran amendment to drastically diminish the Arapaho and Shoshone *Winters* Doctrine water rights in the Big Horn River basin. The Wyoming Supreme Court found as the follows:

The quantity of water reserved is the amount of water sufficient to fulfill the purpose of the lands set aside for the Reservation.

The Court, while recognizing that the Tribes were the beneficial owners of the reservation's timber and mineral resources... and that it was known to all before the treaty was signed that the Wind River Indian Reservation contained valuable minerals, nonetheless concluded that the purpose of the reservation was agricultural. The fact that the Indians fully intended to continue to hunt and fish does not alter that conclusion....The evidence is not sufficient to imply a fishery flow right absent a treaty provision....The fact that the tribes have since used water for mineral and industrial purposes does not establish that water was impliedly reserved in 1868 for such uses. The District Court did not err in denying a reserved water right for mineral and industrial uses....The District Court did not err in holding that the Tribes and the United States did

*not introduce sufficient evidence of a tradition of wildlife and aesthetic preservation which would justify finding this to be a purpose for which the Reservation was created or for which water was impliedly reserved....Not a single case applying the reserved water right doctrine to groundwater is cited to us....In Colville Confederated Tribes v. Walton, *supra* 547 F. 2d 42, there is slight mention of the groundwater aquifer and of pumping wells, *Id.* at 52, but the opinion does not indicate that their wells' are a source of reserved water or even discuss a reserved groundwater right....[T]he district court did not err in deciding there was no reserved groundwater right.*

The statement by the Wyoming Supreme Court that Colville does not discuss a reserved water right to groundwater is in error, for Colville did decree reserved groundwater rights.

The Wind River case is a tragedy. The only purpose of the Wind River Indian Reservation recognized by the Wyoming Supreme Court was agricultural. The Arapaho and Shoshone had believed that the purpose of the reservation was to provide a permanent home and abiding place for their present and future generations to engage in pursuits of a viable economy and society. Despite existing oil and gas resources they were denied reserved water for mineral purposes. Despite the need for industry in a viable economy, they were denied reserved water for industry. Despite a tradition of hunting and fishing, they were denied reserved water for wildlife and aesthetic preservation. Despite the existence of valuable forests, they were denied reserved water for these purposes. Despite the existence of valuable fisheries established from time immemorial, they were denied a reserved water right to sustain their fisheries.

The United States Supreme Court reviewed the Wind River decision on the following question:

In absence of any demonstrated necessity for additional water to fulfill reservation purposes and in presence of substantial state water rights long in use on reservation, may reserved water rights be implied for all practicably irrigable lands within reservation set aside for specific Tribe? 57 LW 3267 (October 11, 1988).

Acting without a written opinion and deciding by tie vote, the U.S. Supreme Court affirmed the decision of the Supreme Court of the State of Wyoming, but a change in vote by a single justice could have reversed the decision and severely constricted the benefits of the *Winters* doctrine to the Indian people. The decision is limited to the State of Wyoming on critical issues, namely that Indian reserved rights do not apply to groundwater; the absence of a reserved water right for forest and mineral purposes; the absence of a reserved water right for fish, wildlife and aesthetic preservation; and the reduction of the Tribes' claims to irrigation from 490,000 to less than 50,000 acres.

The acreage for irrigation finally awarded to the Wind River Arapaho and Shoshone Tribes for future purposes was 48,097 acres involving approximately 188,000 acre-feet of water annually.¹

¹ In determining the Tribes' claims to practicably irrigable acreage, the United States (trustee for the tribes) began with an arable land base of approximately 490,000 and relied on its experts to arrive at over 88,000 practicably irrigable acres. The claim was further "trimmed" by the United States to 76,027 acres for final projects. The acreage was further reduced during trial to 53,760 acres by Federal experts with a total annual diversion requirement of about 210,000 acre feet. (Teno Roncalioi, Special Master, In Re: The General Adjudication of All Rights to the Use of Water in the Big Horn River System and all Other Sources, State of Wyoming, concerning reserved water right claims by and on behalf of the Tribes of the Wind River Indian Reservation, Wyoming, December 15, 1982, pp. 154 and 157).

3. HISTORICAL SUPPRESSION OF INDIAN WATER RIGHT DEVELOPMENT

During the past three decades, particularly the last decade, the focus of federal policies has been to diminish the amount of water rights to which the tribes are entitled and to place the adjudication of those water rights in state court, a forum unacceptable to the tribes.

Selected examples of suppression of Indian water development in the Missouri River basin will be presented. These examples demonstrate that from the turn of the last century to the close of this century, there has been a pattern of by-passing Indian water development in favor of non-Indian development where water supplies are in competition.

It is important here to underscore that the Master Water Control Manual Review and Update by the U.S. Army Corps of Engineers is the latest development in such federal activities that expressly overlooks Indian water rights. Water needed to satisfy those rights has been committed to other federal purposes.

The Master Water Control Manual Review and Update by the Corp ignores the prior and paramount rights of the tribes. Specifically, the Corp proceeds as follows:

"The Missouri River basin Indian Tribes are currently in various stages of quantifying their potential future uses of Mainstem System water. It is recognized that these Indian tribes may be entitled to certain reserved or aboriginal Indian water rights in streams running through and along reservations. Currently, such reserved or aboriginal rights of tribal reservations have not been quantified in an appropriate legal forum or by compact with three exceptions...the Study considered only existing consumptive uses and depletions; therefore, no potential tribal water rights were considered. Future modifications to system operation, in accordance with pertinent legal requirements, will be considered as tribal water rights are quantified in accordance with applicable law and actually put to use. Thus, while existing depletions are being considered, the Study process does not prejudice any reserved or aboriginal Indian water rights of the Missouri River basin Tribes." (PDEIS 3-64).

The Tribes of the Mni Sose Coalition object to Corps position on their water rights in the Missouri River basin. First, the water rights of the Tribes are vested and do not require adjudication or quantification to exist. Title to Indian water rights is a property right even when used by the Corps of Engineers or other federal agencies. The Tribes reject the presumption by the Corps of Engineers that quantification, adjudication, or settlement by compact of reserved water rights is required before the Corps can properly consider those rights.

Second, the Tribes of the Mni Sose Coalition rejects the failure by the Corps to distinguish between Missouri River water stored and released for federal, state, and private purposes that is (a) reserved waters of the Tribes or (b) surplus waters of the United States. The

Corp and other federal agencies have a trust responsibility to preserve and protect the Tribes *Winters* rights to the use of water:

...The Federal Government recognizes its trust responsibilities to protect Indian water rights and assist Tribes in the wise use of those resources... (House Report 102-1016, Conference Report, Reclamation Projects Authorization and Adjustment Act of 1992, pg. 98).

When the Corps fails to distinguish between Indian reserved water rights and surplus waters of the United States, Indian reserved water rights are committed to federal, state, and private purposes without appropriate benefits accruing to the Tribes.

Finally, the proposition that the Corps does not prejudice Indian water rights is rejected. By failing to distinguish between Indian water rights of the Tribes and other waters stored and released in the Missouri River mainstem system, the Corp fails to protect the water rights of the Tribes and promotes the continued reliance upon those water rights by federal, state, and private interests that benefit from storage and release of water in and from the Missouri River Mainstem system.

3.1 Before the 1944 Flood Control Act and Pick-Sloan Plan

Planning for major water development projects in the Missouri River basin was underway prior to and immediately following the establishment of the Reclamation Service (predecessor of the Bureau of Reclamation) in 1902. Early efforts were concentrated on the Milk and Saint Mary Rivers involving the Fort Belknap and Blackfoot Tribes, respectively. By 1905, concurrent with the prosecution of the *Winters* case on Fort Belknap, the Reclamation Service has devised a plan for the irrigation of the Milk River Valley. The plan was developed by engineer, Cyrus C. Babb, namesake of the community of Babb, Montana, located on the Blackfoot Indian Reservation.

The Milk River Plan was intended to irrigate 250,000 acres, including 32,995 acres on the Fort Belknap Indian Reservation. The Reclamation Service, however, did not perceive the Tribe or its membership as the irrigators of Indian land on Fort Belknap. As stated in the Third Annual Report of the Reclamation Service:

During 1904, a canal has been surveyed from the South side of Milk River, heading about three miles southeast of Chinook. It continues eastward through the Fort Belknap Indian Reservation, and will be 57 miles long. It has a most excellent location, with very little sidehill construction and only a few flume crossings. The total area covered is 48,000 acres, of which 15,000 acres are west of the Reservation and the balance [33,000 acres] on the Reservation itself. In order to make this latter area available the opening of a portion of the Indian Reservation would be necessary. (Third Annual Report of the Reclamation Service, pg. 301).

The *Winters* decision in 1906 (followed by the U.S. Supreme Court decision in 1908) confirmed the reserved rights of the Fort Belknap Gros Ventre and Assiniboine Tribes. The decision enjoined Henry Winters and others from interfering with the flows of the Milk River that would otherwise diminish the 5,000 miners inches (125 cubic feet per second) needed for irrigation of approximately 10,000 acres by the Fort Belknap Indians (as distinguished from the 33,000 acres that had been identified by the Reclamation Service with the necessity that the area be open to white settlement).

The project on Fort Belknap, developed by the Tribes as of 1906, was never enlarged to encompass the 33,000 acres contemplated by the Reclamation Service. Rather, the Reclamation Service built a non-Indian project, both upstream and downstream from the Fort Belknap Indian Reservation, to the extent that all of the natural water supply of the Milk River was exhausted. There was no additional water supply to irrigate the additional Indian lands on Fort Belknap, because the full water supply of the Milk River had been committed to the non-Indian projects by the Reclamation Service.

As shown in Chapter 2, the Ahtanum decision on the Yakima Indian Reservation in 1956, the 9th Circuit Court of Appeals applied the principles of the *Winters* decision and found that "...the Indians were awarded the paramount right regardless of the quantity remaining for use of white settlers." The court further found that "...if the amount awarded the United States for the benefit of the Indians in the *Winters* case equaled the entire flow of the Milk River, the decree would have been no different." (see Chapter 2).

The Federal Circuit Court had an entirely different concept of the *Winters* doctrine than the Federal Reclamation Service. By law, the Fort Belknap Tribes were entitled to the use of all the Milk River, but the Reclamation Service committed the entire flow of the Milk River to non-Indian projects and the Fort Belknap Indians were unable to develop to the level that Reclamation Service had originally contemplated when it proposed that the Fort Belknap Indian Reservation be opened to white settlement for purposes of irrigation.

During these early years (circa 1905), Cyrus C. Babb, recognizing that the flow of the Milk River was inadequate to irrigate the full 250,000 acres planned by the Reclamation Service, sought the waters of the St. Mary River to supplement the Milk River. The St. Mary River rises on the Blackfeet Indian Reservation (making it a *Winters* stream of the Blackfeet) and flows northward into Canada where it joins the Bow River to form the South Saskatchewan River, which flows into Hudson Bay. In 1905 the Reclamation Service considered three options as follows:

- (1) Diversion of the St. Mary to the North Fork Milk River where it would be allowed to run through Canada to the Lower Milk River Valley.
- (2) Utilize the waters on the eastern section of the Blackfeet Indian Reservation and on lands immediately east of the Reservation.

- (3) Convey the St. Mary water across both the North and South Forks of the Milk River to Cutbank drainage, allowing it to flow down Marias River 100 miles or more to the Big Sandy area between the Missouri and Milk Rivers.

Cyrus Babb found that the most feasible project was the first: diversion of the St. Mary River to the North Fork Milk River for use in the Lower Milk River Valley. Babb, also found that the second plan could be feasibly carried out. He found that the eastern part of the Blackfeet Indian Reservation and the country immediately east of it was well adapted to irrigation. He identified a level tract of good soil comprising 100,000 acres with no available water supply immediately near it that could be served from the St. Mary River.

Two points need to be made with regard to this early planning of the Reclamation Service. First, when the *Winters* case was being prosecuted and following all decisions in the *Winters* case, the Reclamation Service was committing all of the waters of the Milk River, except those awarded to Fort Belknap in *Winters*, to non-Indian reclamation projects. The Reclamation Service was likewise committing all of the Blackfeet *Winters* waters of the St. Mary River to purposes outside the Blackfeet Indian Reservation, namely a supplemental supply in the Milk River Valley for non-Indians. Second, the United States entered into the International Boundary Waters Treaty with Canada for specific purpose of dividing the waters of the Milk and St. Mary Rivers equally between the two countries. This Treaty was adopted in 1909. No mention or resolution of the Blackfeet and Fort Belknap *Winters* doctrine rights in the St. Mary and Milk Rivers was addressed in the Treaty with Canada.

The effect of the 1909 Boundary Waters Treaty and the development of the Milk and St. Mary Rivers by the Reclamation Service was to limit the development of water by the Blackfeet and Fort Belknap Tribes. On Fort Belknap, the Tribes were limited to 10,000 acres, the first stage of which was the subject of the *Winters* case of their larger project. Reclamation abandoned all irrigation on the Blackfeet Indian Reservation from the St. Mary's River and diverted the stream to the non-Indian Federal Reclamation Project in the Milk River Valley.

The law on the one hand provided that the Blackfeet had rights to irrigate its portion of 100,000 acres identified by Cyrus Babb as irrigable from the St. Mary's River, and the Fort Belknap Tribes had a right to irrigate as many as 33,000 acres below the canal across the Fort Belknap Indian Reservation which headed to the east of Chinook, Montana. But the Reclamation Service prohibited the development of those acres by committing all of the available water supplies to non-Indian projects.

As a practical matter, the Blackfeet and Fort Belknap tribes in 1993 are forced to negotiate with the State of Montana for the reason that it is highly improbable that an adjudication process in the State courts would cause the discontinuation of water diversion by non-Indians in the Milk River Valley to permit Blackfeet or Fort Belknap to exercise their rights, which were diverted away from them by the Reclamation Service (circa 1905) and which the Reclamation Service found feasible at the time.

The Reclamation Service development projects for non-Indians that relied on Indian reserved water was not limited to the Milk and St. Mary Rivers. The Belle Fourche Project in the headwaters of the Cheyenne River above the Pine Ridge and Cheyenne River Indian Reservations was advanced before the Pick-Sloan Plan.

By 1940, there were 462,500 acres irrigated in the Bighorn Basin of Montana and Wyoming, relying substantially on *Winters* doctrine water rights of the Arapaho, Shoshone, and Crow Tribes. The Riverton project was begun in 1920 by the Bureau of Reclamation. By 1940, it irrigated approximately 35,000 acres. Bull Lake and Pilot Butte Reservoirs provided storage capacity of 182,000 acre feet. A total of about 117,000 acres were irrigated in 1940 in the central Bighorn Basin. The Shoshone Project, one of the oldest developments of the Bureau of Reclamation, provided water to the Garland Division in 1908. By 1940, four divisions of the Shoshone Project, including a reservoir, had been developed to irrigate 58,900 acres.

By 1940, the dependable water supply of the Tongue River below Tongue River Reservoir in Montana had been fully developed primarily for non-Indian irrigation without consideration of the rights of the Northern Cheyenne.

3.2 After 1944 Flood Control Act and Pick-Sloan Plan

Thus, the water supplies with which to fulfill the *Winters* doctrine rights of the Blackfeet, Fort Belknap, Wind River, Crow, and Northern Cheyenne Tribes had been largely committed to the Milk River, Bighorn, and Tongue River projects before the Pick-Sloan Plan.

Similarly, Big Sandy, Boxelder, and Beaver Creeks, which discharge to the Milk River, were relied upon as tributary inflow to the Milk River Project, even though these streams rise upon and flow through the Rocky Boys Indian Reservation.

Irrigation projects were developed before 1944 on the Indian reservations in Montana, including Blackfeet, Rocky Boys, Fort Peck, Crow, and Wind River. However, much of the land and irrigation (from 80-90%) was on lands within the reservations that were irrigated by non-Indians. On Fort Belknap, however, where the Tribes developed the irrigation project that required injunction against Henry Winters and others on the Milk River system, the land was owned predominantly by Tribal members.

In North and South Dakota there was a considerable taking of Indian land for building the mainstem dams of the Pick-Sloan Plan. All of the mainstem reservoirs in North and South Dakota, Lake Sakakawea, Lake Oahe, Lake Sharpe, Lake Francis Case, and Lewis and Clark Lake, are bordered, in part, by Indian reservations. The affected reservations from upstream to downstream include Fort Berthold, Standing Rock, Cheyenne River, Lower Brule, Crow Creek, Yankton, and Santee.

The 1868 Treaty had established the east bank of the Missouri River as the eastern boundary of the Great Sioux Reservation. When gold was found in the Black Hills after the Treaty of 1868, the United States lost interest in preserving the permanency of the Great Sioux Reservation promised by the Treaty of 1868:

...the United States agrees that the following District of Country...shall be...set apart for the absolute and undisturbed use and occupation of the Indians herein named.... (Kappler, 1904, pg. 998).

The division of the Great Sioux Reservation into nine smaller parts by an 1889 act of Congress, including the above named reservations, was a pre-requisite to statehood for South Dakota. The Great Sioux Reservation had previously occupied all of present-day South Dakota east of east high Bank of the Missouri River.

In North and South Dakota there was also a promise of irrigation development and participation in the electrical generation for the Tribes stemming from the Pick-Sloan Plan. The Summary Forward of the Pick-Sloan Plan provided that all planning would be coordinated, and such planning necessarily required consideration of the Tribes' prior and paramount rights to the use of water, but no such coordination was undertaken. Indian lands were taken for the construction of the dams and reservoirs needed for the Pick-Sloan Plan. The 9-foot navigation channel below Sioux City was constructed across the reservations of the Omahas and Winnebagos. The Bureau of Reclamation and Corps of Engineers proceeded to develop non-Indian projects above the Indian reservations on the tributary streams.

The following lands were taken to construct the mainstem reservoirs between Gavins Point and Sakakawea:

<u>Reservation</u>	<u>Reservoir</u>	<u>Acres Taken</u>
Fort Berthold	Garrison	154,912
Standing Rock	Oahe	55,994
Cheyenne River	Oahe	99,548
Lower Brule	Big Bend	14,958
Lower Brule	Fort Randall	7,997
Crow Creek	Big Bend	6,416
Crow Creek	Fort Randall	9,149
Santee	Gavins Point	<u>593</u>
Total		349,566

Congressional acts and other arrangements to take the lands of the Tribes were dated from 1949 through 1962. A total of 349,566 acres or 23% of the 1,499,759 project acres for these dams and reservoirs were taken from Tribes. Miles of artificial navigation channel were constructed across the Omaha and Winnebago Indian Reservations.

On the tributary streams there were plans for Indian developments, none of which materialized for the reason that the Bureau of Reclamation implemented or participated in projects that fully monopolized the dependable water supplies of the tributary streams and physically foreclosed the opportunity for Indian developments that had been identified in the Pick-Sloan Plan, irrespective of the Tribes' prior and superior water rights. That the United States, acting through the Department of the Interior, was aware of the prior superior rights of the Tribes is without question, and that they proceeded, nevertheless, to develop non-Indian projects is also without question as shown below.

On the Standing Rock Indian Reservation, the Pick-Sloan Plan contemplated the development of the Grand River:

Although 66,680 acres in the Grand River basin in South Dakota was found to be adapted to irrigation, full regulation of the water supply will permit development of only 28,500 acres, which will be accomplished by creating the Shadehill Reservoir of a capacity of 134,000 acre-feet, and by serving 13,000 acres by a gravity canal diverting from the river at the reservoir. Return flow from land irrigated with water from this reservoir will be picked up in the Blue Horse Reservoir some 28 miles downstream, where a capacity of 50,000 acre-feet will be provided to serve 16,500 acres of land and 46 smaller pumping units, ranging from 85- 1,285 acres each. Much of the land below the Blue Horse Reservoir is within the Standing Rock Indian Reservation, and is owned by Indians, while practically all of the land above the Blue Horse Reservoir is in private white ownership. (Senate Document 191, pg. 76).

The Bureau of Reclamation constructed the Shadehill Irrigation Project, but no Indian land was ever developed within the Standing Rock Indian Reservation. In connection with the Shade Hill project, the Indian Service wrote as follows at the time of the implementation:

Under the authorities, the waters involved in the cases arising from interference with waters on, bounding, or flowing through Indian reservations are not open to appropriation by individuals to the detriment of the Indian wards of the United States who may require such for agricultural and domestic uses, even though there is no present great water use because of the failure of the trustee, the United States, to foster or permit irrigation on or for the Indian lands... The Indian lands on the Standing Rock Reservation, State of South Dakota, enjoy prior reserved rights for the use of the waters of the Grand River and its tributaries for (1) the lands in Tribal ownership and (2) allotted lands. This property right was retained by the provisions of the Treaty of April 29, 1868..., subsequent acts of Congress and in proclamations of the President of the United States which further defined the area of the Standing Rock Sioux Tribe... (Walter J. Turnbull, February 10, 1949, U.S. Bureau of Indian Affairs, Billings, MT).

Following the building at Shadehill, the U.S. Army Corps of Engineers built the Bowman-Haley project with a capacity of 93,000 acre-feet on the North Fork of the Grand River (1966). The project followed 60 years of investigation by the Bureau of Reclamation and Corps

of Engineers and was intended to irrigate 2,200 to 8,000 acres. This project further encroached upon the physical capability of the Standing Rock Sioux Tribe to develop irrigation within the Reservation, irrespective of the prior and superior water rights of the Tribe.

The Pine Ridge Indian Reservation in the southwest corner of South Dakota relies upon the White and Cheyenne Rivers as sources of *Winters* doctrine rights to the use of water. However, the Whitney Irrigation project has dominated the flows of the White River since the 1920's. The Bureau of Reclamation wrote as follows in 1968:

The Whitney Irrigation project, was constructed in 1923 near Crawford, Nebraska....Stream flows of the White River have been over-appropriated for many years and are sufficient to satisfy water rights in Nebraska and South Dakota only during flood and high flow periods.... (U.S. Bureau of Reclamation, Missouri-Oahe projects office, 1968).

The Pick-Sloan Plan acknowledged the development of the non-Indian Whitney Irrigation project on the White River in Nebraska and proposed a plan that would restore a dependable supply of water for the Pine Ridge Indian Reservation, but that plan and subsequent plans proposed by the Bureau of Reclamation were never implemented. The Pick-Sloan Plan provided as follows:

All of the water resources of the White River arising in Nebraska have already been utilized by the Whitney Irrigation District, an area of some 10,000 acres, served by an inland reservoir of 15,0000 acre-foot capacity. A supply canal for this reservoir diverts a spring flow in the White River, which is markedly uniform throughout the year. In South Dakota, the remaining watershed produces an exceedingly erratic run-off, with high discharges from summer rainstorms, which fall on the prairie area and on a large area of shale badlands, that produce quick and heavily silt-laden run-off. A reservoir of 70,000 acre-foot capacity at the Rocky Ford site [Pine Ridge Indian Reservation] about 25 miles upstream from the town of Interior, will furnish an adequate water supply for 42,000 acres of small units, scattered from the reservoir site to the mouth of the river, all of which must be served by pumps. Power to operate the pumps will be imported into the basin. The available water supply will serve less than half of the area of land in the basin which is adapted to irrigation. (Senate Document 191, pg. 77).

Thus, it was well known by the Bureau of Reclamation and Corps of Engineers as they developed the Pick-Sloan Plan that the prior and superior water rights of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation were adversely impacted by the Whitney Irrigation Project and that a physical solution was possible by building the Rocky Ford Dam site and irrigating Indian within the Pine Ridge Indian Reservation. Subsequent investigations by the Bureau of Reclamation identified the Slim Butte Reservoir as an alternate storage site. Reclamation described that project as compatible with the present level of water resources development in Nebraska, immediately south of the boundary of the Pine Ridge Indian Reservation. As late as

1977, the Bureau of Reclamation acknowledged the prior and superior rights of the Oglala Sioux Tribe but proceeded nevertheless to assist the Whitney Irrigation Project with rehabilitation and upgrading of its facilities:

"On September 13, 1973, the regional loan engineer and chief, water and land of the Missouri-Oahe project office, met with members of the District, board members, and District's Attorney to discuss the potential project. Representatives of the Fish & Wildlife Service, Soil Conservation Service, and Nebraska Department of Water Resources participated in the meeting. Based on discussions with the Bureau, the District subsequently requested the Bureau for an opinion on the water rights of the Whitney Irrigation District, particularly with respect to the downstream Indian reservation. (Bureau of Reclamation, 1977).

"Please be advised that we have examined the report [of Whitney Irrigation District] and believe it to be legally sufficient. The sponsor is an irrigation district organized, qualified, and under State law to, among other things, enter into contracts with the United States, acquire lands and interest in lands and hold water rights." (Bureau of Reclamation, 1977).

The Governor of Nebraska, on January 10, 1977, confirmed that the State of Nebraska recognized the water rights of the Whitney Irrigation District:

"The application for a Small Reclamation Project Loan submitted by the Whitney Irrigation District appears to be financially feasible. In addition, water rights claimed by the applicant are adequate and valid. Therefore, I would recommend that the loan application of the Whitney Irrigation District be forwarded to the Secretary of the Interior for consideration." (Exxon 1977).

It is clear that the United States knew that the Whitney Irrigation Project dominated the dependable water supplies of the White River and, that additional storage facilities were needed (under the circumstances of the Whitney Irrigation Project) on the Pine Ridge Indian Reservation to accomplish irrigation using the prior and superior water rights of the Oglala Sioux Tribe. Nevertheless, the United States did not proceed to resolve the water rights conflict between the Oglalas and the inferior claimants of the Whitney Irrigation District. Reclamation assisted the District as recently as 1977 in the rehabilitation of its project. Both the Oglala Sioux and Rosebud Sioux Tribes are affected by the Whitney Irrigation Project and the actions of the United States respecting the White River.

The plans for the future development of the Cheyenne River in the Pick-Sloan Plan were as follows:

...Cheyenne River is the largest tributary of the Missouri in South Dakota.... One other reclamation project has been authorized, namely the Angostura project in the southwest part of the Cheyenne River watershed, whereby the construction of Angostura Reservoir with a capacity of 160,000 acre-feet water can be supplied by gravity to a 16,000 acre project in the vicinity of Hot Springs, S. Dak., and to 25,300 acres in 49 scattered pumping units along the lower reaches of the River... (Senate Document 191, pg. 76).

The Cheyenne River is a source of *Winters* doctrine rights to the use of water of the Oglala Sioux of the Pine Ridge Indian Reservation and the Cheyenne River Sioux of the Cheyenne River Indian Reservation. Despite the potential identified in the Pick-Sloan Plan for development of part of the project on the Pine Ridge and Cheyenne River Indian Reservations, the Angostura project was constructed exclusively on non-Indian lands, upstream from both the Pine Ridge and Cheyenne River reservations.

In summary, for the past 90 years, there has been a consistent pattern of developing Bureau of Reclamation projects on the Missouri River basin that rely upon Indian land and water. The physical supplies available to the Tribes (both quantity and quality) have been diminished to the point that they are often unusable by the Tribes. Today, the Indian Tribes of the Missouri River basin, particularly in Montana and Wyoming, are being forced into State Court for the purpose of guaranteeing that the Bureau of Reclamation and private irrigation projects can continue at their present level of development without the necessity of yielding to the superior rights of the Tribes. Technical criteria have been developed by the United States Departments of Justice and Interior that place unworkable barriers on the Tribes in State-Court McCarran Amendment adjudications. Cyrus Babb and the other Reclamation engineers throughout the history of the Missouri River basin development were never faced with the burdens of proof imposed by the criteria developed by the Departments of Justice and Interior and used in the Wind River case in Wyoming.

Continued demands are being made to restrict the Tribes rights to the use of water. States in the Missouri River basin are now claiming reserved water rights for state purposes. In Montana, for example, where all water that can effectively be diverted by state appropriators is in use, the agencies of the State, are declaring reservations of water for future purposes that conflict with the water rights of the Montana Tribes and likewise conflict with the other tribes of the Mni Sose Coalition in Wyoming, North Dakota, South Dakota, Nebraska, and Iowa.

It is imperative that the Corps of Engineers exercise its fiduciary duty to protect the water resources of the Indian tribes as articulated in Public Law 102-575 and to distinguish between the water supplies stored and released from the reservoirs that are required to fulfill the *Winters* doctrine rights of the Tribes and the reserved water supplies that are surplus to the needs of the United States or others. Without that distinction, the Corps of Engineers is promoting and encouraging a continuation of the violation of the Tribes *Winters* doctrine rights to the use of water.

4. FAILURE OF THE PRELIMINARY DRAFT ENVIRONMENTAL IMPACT STATEMENT TO ADDRESS INDIAN ISSUES

The Mni Sose Coalition and other tribes of the Missouri River basin, individually and collectively, have met with the Corp of Engineers, corresponded and otherwise attempted to assist the Corp of Engineers in the scoping of Indian issues related to *Winters* doctrine water rights and benefits of the Missouri River basin Pick-Sloan Plan. Proper consideration of *Winters* doctrine and Indian Pick-Sloan benefits has been excluded from the Environmental Impact Statement. The following treatment of Indian water rights by the Corp of Engineers is wholly inadequate:

The Study considered only existing consumptive uses and depletions; therefore, no potential tribal water rights are considered. Future modifications and system operation, in accordance with pertinent legal requirements, will be considered as tribal water rights are quantified in accordance with applicable law and actually put to use. (PDEIS, pg. 3-64).

Moreover, the PDEIS is inadequate for the reason that cultural, spiritual, economic and other analyses relative to the Indian population in the Missouri River basin is inadequate. There has been no assessment of the cultural and spiritual values of the river, its tributaries and its aquifers to the Missouri River basin tribes. Mitigation for the discovery or exposure of human remains associated with operation of the reservoirs and other project features was not addressed in the PDEIS.

Population data was produced for the Indian reservations, but employment and income status were not properly addressed. The Corp makes the following statements:

However, employment data specific to the reservations were not available from the Bureau of Economic Analysis (BEA), Bureau of Indian Affairs (BIA), or the tribal leaders or planners of individual reservations. Therefore, employment information from the applicable counties is provided as an indication of reservation employment and income status. (PDEIS, pg. 3-100).

County income and employment statistics are generally not representative of Indian income and employment. Census data from 1990 should be obtained to better address the income and employment conditions on the Indian reservations, specifically related to the Indian population. The mixing of non-Indian employment and income statistics significantly increases the appearance of employment and income above actual conditions experienced by the tribal memberships.

4.1 Hydrologic Model and Depletion Estimates are Obsolete

The hydrology used by the Corp of Engineers was based on the period of record from 1898 to 1991 (PDEIS, pg. 3-6). It is our understanding that depletions were reanalyzed by the Bureau of Reclamation in 1987 and that this analysis shows no new depletions past year 2005. Therefore, the depletion estimates upstream from Sioux City were considered current for the last

year of the hydrologic study (1990). Depletions for the tributaries were based on data obtained from the Missouri Basin States Association in a report entitled "Missouri River Basin Hydrologic Study Final Report" (Vol. 2, pg. 4). The PDEIS is obsolete because it does not consider existing water rights of the tribes for future purposes.

The PDEIS is inadequate for the reason that the hydrology was analyzed on the basis of historic depletions but does not consider Indian reserved water rights that are not part of the historic depletions. An analysis to determine the impact of existing unsettled/unadjudicated and settled/adjudicated reserved rights of the Indian tribes is needed to determine the impact on operations of the Missouri River mainstem dams. In the absence of that analysis, hydropower production, water supply, navigation, endangered species and other project purposes cannot properly be analyzed.

Reasonable assumptions can be made with regard to the amounts of reserved Indian water not included in the depletion estimates used by the Corp in order to determine the effect of Indian water rights on operations. In the absence of that analysis, the seven final alternatives analyzed by the Corps do not properly reflect the dependence of future operations on water reserved by the tribes and surplus waters of the United States. Failure to separate Indian reserved rights from the currently available water supply creates artificial confidence in the supply available for present operations to generate hydropower, maintain water levels in the reservoirs, supply downstream diversions and meet navigation requirements, among the purposes.

4.2 Navigation Enhancement on the Mississippi River

The Missouri River joins the Mississippi River at St. Louis, Missouri. The Corps defines two reaches of Mississippi navigation subject to restriction during low flow: (1) upper reach, St. Louis to Cairo and (2) lower reach, South of Cairo. Critical navigation years were 1939, 1988 and 1989. The Corp analyzed the effect of Missouri River operations on the Mississippi River in the reaches set out above reaches during the entire period of hydrologic record and during the critical navigational years. The Corp concluded that Missouri River impact on the Mississippi River was not substantial considering both shallow and deep draft navigation operations. Targets were set for the Mississippi River and analyses were reconducted with little gain or loss in benefits. The Corp concluded as follows:

In summary, there are little gains or losses associated with Missouri River target alternatives. There may be considerable improvement in Mississippi River navigation benefits for a specific event. Because the monthly modeling capability of the LRS Model does not provide the necessary detail to model the specific events which could only last a few days or a couple of weeks, the results reported at this time provided limited insight on the merits of the Mississippi River target. Daily modeling is required before a final decision on this issue can be made. (PDEIS, pg. 5-248; Vol. 6D Mississippi River Economics, pp. 34 et seq).

Irrespective of the deficiencies of the LRS Model, Mississippi River target levels in the upper and lower reach should be fully analyzed in the PDEIS. The contribution of the Missouri River to the Mississippi River has been a subject of considerable concern, and the General Accounting Office has concluded that in 1988:

"...The Corp did not increase water releases from the Missouri River system of dams and reservoirs it controls specifically to aid navigation on the Mississippi River in 1988....The Corp did not increase target levels because of deteriorating river conditions on the Mississippi.... (General Accounting Office, November 1980, pg. 1.)

The General Accounting Office quotes Corp authority on the Missouri River as follows:

"...The proposed Missouri River basin reservoirs, operated in coordination with the authorized reservoirs in the Ohio, Arkansas, and other basins would become an important and beneficial part of the flood-control system of the lower Mississippi River. Use of stored water for multiple purposes would also improve low- water flows in the Mississippi River thereby saving considerable dredging costs for the 9-foot navigation channel.... (As quoted by GAO, November 1990, pg. 9).

Irrespective of the authority of the Corps, Mississippi River navigation interests have consistently expressed concern over the capability of the Missouri River to improve navigation flows for the Mississippi River and the failure of the Corp of Engineers to operate the Missouri River toward that end. A reasonable and prudent alternative for the PDEIS is full examination of the capability of the Missouri River system to benefit the Mississippi River system. Conceivably, if short-term benefits in the Mississippi could be realized, that are substantially greater than the short-term losses in the Missouri River, decision makers would benefit from that analysis. The PDEIS is deficient because it does not fully analyze the potential benefits of meeting target flows on the Mississippi River. The Tribes require an improved navigation analysis to determine the contribution of reserved Indian water rights to navigation benefits.

4.3 Hydropower Values Are Understated

The Corp states that the basis for valuation of hydropower benefits of the mainstem system of dams was the:

...value of constructing and operating new thermal facilities that would effectively replace the power produced by the mainstem system hydropower facilities. (Volume 6D, Hydropower Economics, pg. 1).

The six mainstem dams and reservoirs have 36 units of generators with a combined capacity of 2,409 megawatts. The dependable capacity of the system is marketed by the Western Area Power Administration (WAPA). WAPA bases its dependable resources for marketing on reoccurrence of drought conditions that occurred in 1961. WAPA has determined that the mainstem system can provide capacity available in 1961 about 85% of the time. The dependable hydropower marketed by Western, based on 1961 conditions, is 2,070 megawatts (MW) in summer and 2,010 MW in winter.

The Corps identifies Big Bend and Oahe Dams as the primary peaking-type plants. Garrison, Fort Randall and Fort Peck Dams are also used extensively for peaking but to a lesser degree than Big Bend and Oahe, according to the Corps. In summer, with reservoirs full, the system provides base generation of about 500 megawatts then reaches peak generation (about 2,000 MW) at about 5:00 p.m. In winter, the load pattern reaches peak between 1,600 and 1,700 MW at about 12:00 noon and 6:00 p.m.

The peaking capability should be based on greater values than the cost of replacement with a base load thermal operation. The value functions used by the Corp in the PDEIS require re-assessment because the cost of replacing hydropower in the mainstem system with thermal capability to meet peak instantaneous demands is impractical and peaking power has a considerably higher value than the cost of replacement thermal power.

4.4 Contribution of Indian Reserved Water Rights to NED (National Economic Development) Benefits.

The Corps presents average annual NED (National Economic Development) benefits for the 93-year simulation (1898 through 1990) for the current Master Control Manual as follows:

Flood Control	\$0.041 Billion
Hydropower	.655 Billion
Water Supply	.546 Billion
Recreation	.048 Billion
Navigation	<u>.016 Billion</u>
TOTAL ANNUAL	\$1.277 Billion

Of the detailed analysis of seven alternatives for future operation of the Missouri River, the best of the seven would increase average annual NED (National Economic Developments) benefits to \$1.284 billion.

Clearly, hydropower has the greatest contribution to the economic value of the Missouri River basin system. The reduced cost of construction, operation and maintenance of facilities to supply municipal, rural and industrial water (defined by the Corps as the Water Supply benefit) is the next largest contribution to benefits. Navigation apparently provides the least contribution to NED benefits of the principle purposes of the project.

Important here is the fact that the PDEIS fails to distinguish between the NED benefits produced by Indian water rights and those produced by surplus waters of the United States or other waters. Presentation of the total value of NED benefits without identification of the source of those benefits is inappropriate. As shown in the previous chapter, activities by the United States have prevented the Tribes from exercising their *Winters* doctrine reserved water rights on the tributaries to the Missouri River.

4.5 Economic Impact On Tribes

The PDEIS by the Corps does not assess the economic impact of continued use of the Tribes reserved *Winters* doctrine rights to the use of water by the United States. The Corps has made no effort in the PDEIS to protect and preserve the Tribes' reserved water rights. The Corps dismisses the existence of the Tribes reserved rights without adjudication or settlement. By failing to exercise the responsibility to act as trustee for the Tribes, the Corps has taken another step in denying the Tribes water rights. The Corps and other federal agencies have conflicts of interest because they rely on Indian *Winters* doctrine water rights to support federal and other projects.

If the United States continues to rely on *Winters* doctrine rights to the use of water to support the Missouri River Basin Pick-Sloan Project, then the PDEIS should address the economic impacts of continued non-development of the *Winters* doctrine rights to the use of water as well as diminishment of those rights in McCarran Amendment proceedings and in negotiated settlements that are forced by McCarran Amendment proceedings.

4.6 Trust Duty

The United States has a duty of a trustee to perform for American Indians. The fiduciary relationship resembles a guardianship or a trust responsibility. In principle, responsibilities of the United States have been expressed as follows:

The United States Government acts as a legal trustee for the land and water rights of the American Indians and has a legal obligation to advance the interests of the beneficiaries of the trust without reservation and with the highest degree of diligence and skill." (Former President Nixon, July 8, 1970, H.R. Doc. No. 91-363, 91st Congress, Second Session (1970), as quoted in Reid Peyton Chambers, Judicial Enforcement of the Federal Trust Responsibilities to Indians, Stanford Law Review, Volume 27, p. 1215, May 1975).

The responsibilities of the United States with regard to the *Winters* doctrine water rights of the Indian Tribes are clear:

The underlying premise of the Winters doctrine is the government's promise implicit in the establishment of reservations, to make them livable and to enable Indians to become self-sustaining. Yet most Indian tribes are not utilizing their full legal entitlement of reserved water rights. Only a small portion of the irrigable lands belonging to Indians or Indian tribes is being cultivated or is included within irrigation projects. For political and institutional reasons, the United States has failed to secure, protect and develop adequate water supplies for many Indian tribes...

One reason for the government's failure to secure, protect and develop Indian water rights can be traced to its conflicts of interest. The United States Congress and the Interior and Justice Departments have responsibility to advance, at the same time, the national interest in land and water use as well as the interest of Indians for whom the

government acts as trustee... Even if direct governmental conflicts are not involved, the political problems associated with enforcement of Indian water rights have often interfered with the governments performance of its trust obligations.

The legal right to water does not automatically bring with it the capital investment necessary to realize its economic benefits. Irrigation systems and other water resource projects often require substantial investments, and the Congress has tended to give a higher priority to projects that benefit non-Indians. Consequently, most Indian tribes have not been able to utilize their full entitlements of water. Felix S. Cohen's Handbook of Federal Indian, Law, (1982).

The PDEIS of the Corps does not provide an assessment of the government's trust responsibilities. Where so many Indian tribes are involved in the proposed federal action and the health, welfare, and economics of the Tribes will be markedly affected by the management of the Missouri River by the Corps or other entity, the need for an assessment of the government's fulfillment of its trust responsibilities to the Tribes is manifest, and NEPA requirements cannot be satisfied in the absence of such assessment.

4.7 Closing

In the PDEIS, the Corps of Engineers is considering only existing consumptive uses and therefore no potential Tribal water rights are considered. Future modifications and system operation, in accordance with pertinent legal requirements, will be considered as tribal water rights are quantified in accordance with applicable law and actually put to use. PDEIS, 3-64.

It is patently clear that the Corps of Engineers fails to understand the nature of Indian water rights reserved under the *Winters* doctrine. They are treaty rights and under the United States Constitution, constitute "the supreme law of the land". They are vested property rights and can not be condemned without just compensation. Cohen describes the uniqueness and paramount stature of Indian rights:

Indian reserved water rights differ significantly from both riparian and appropriative rights. They are not based on appropriation and actual beneficial use and they are not lost by non-use. Sufficient water is reserved to fulfill the purposes for which a reservation was established. The priority of the water right is no later than the date on which a reservation was established which, in the case of most Indian reservations in the West, is earlier than the priority of most non-Indian water rights. Thus, a reservation established in 1865 which starts putting water to use for agricultural purposes in 1981 under its reserved rights has, in times of shortage, a priority that is superior to any non-Indian water right with a state law priority acquired after 1865....For these reasons, Indian rights are generally prior and paramount to rights derived under state law. Handbook of Federal Indian Law 587 (1982), citing Veeder, Indian Prior and Paramount Rights to the Use of Water, 16 Rocky Mtn. Min. L. Inst. 631, (1970).

Based upon this apparent misunderstanding, Indian water rights are not included in the Corps of Engineer models under which the mainstem reservoir system is operated, violating principles established by the U.S. Supreme Court in *Winters* and the treaty rights of the Indian nations of the Missouri River Basin. This express omission of any consideration of Indian water rights is in total ignorance of Indian instream and consumptive water needs and property rights to a substantial portion of the water supply of the Missouri River, its tributaries and its aquifers.

Tribal intergovernmental relations are tribal-federal relations, not tribal-state relations. However, when Congress waived the sovereign immunity of the United States in water right adjudications under the McCarran amendment, the U.S. Supreme Court allowed adjudication of Indian water rights, some of the most valuable treaty rights of the tribes, in state courts. State governments, typically representing non-Indian water users in competition for Indian water, exert strong influences, rendering no fair or meaningful state forum in which to litigate Indian water issues.

In order to have meaningful participation in resource management of the Missouri River Basin, based upon principles of fairness and science and not politics and expediency, the tribal members of the Mni Sose Coalition seek to have the U.S. Congress and the Corps of Engineers work closely with them as they determine the extent of their own present and future needs for water development. Members of the Indian communities possess inherent knowledge about their economies, cultural, land and resources in the spiritual and religious ways of the Native American Indian.

5. CULTURAL RESOURCES AND NATIVE AMERICAN GRAVE PROTECTION

To us the ashes of our graves are sacred and their resting place is hollowed ground.

Chief Seattle

Native holy places are being desecrated and threatened to a greater extent now than at any time in the past.

Susan Shown Harjo

5.1 Background

The Missouri River basin is Indian country. The various Tribes of the Mni Sose Coalition settled in this area and survived and prospered from its resources for millennia. From the Ponca in the lower basin to the Hidatsa, Mandan and Arikara Tribes upstream, and Chippewa, Cree and Blackfeet high in the mountains toward the headwaters, the Missouri River basin constitutes our aboriginal homelands.

The Tribes have a relationship with the river itself, a cultural, spiritual relationship, which non-Indians may not be able to understand. For example, the Arikara, one of the Three Affiliated Tribes of the Fort Berthold Reservation, consider the river to be our grandfather. The Tribes perceive the river as providing life itself. Many of the stories and lessons handed down by our parents and grandparents are set along the Missouri River. In fact, for the Arikara, when one dies they are taken to the spirit world by the Missouri River.

As the Lakota Nation lived and hunted in the Great Plains of present-day Nebraska and the Dakotas, communities developed all along the river's bottomlands. The Lakotas along the river prospered on the food and wildlife resources, forest resources for fuel, wood and medical uses, and the water itself. Of course, with passage of the Flood Control Act of 1944, the construction of the main stem dams flooded the traditional communities and way of life.

The prominent Standing Rock Sioux author, Vine Doloria, Jr., has described Pick-Sloan as "without doubt, the single most destructive act ever perpetuated against any Tribe by the United States." Doloria, in the foreword to Lawson, *Dammed Indians*, University of Oklahoma Press (1982). One tribal elder on the Crow Creek Indian Reservation describes Pick-Sloan's impact on her Reservation with stunning simplicity, "we lost everything."

5.2 Historic Federal Policy on Indian Human Remains and Cultural Resources

Historically, the federal policy toward Indian cultural resources and graves has been one of suppression and destruction. Consequently, the Mni Sose Coalition remains very concerned with the impact on the basin's Indian graves and cultural resources, of the operation of the main stem dams and reservoirs, and the alternatives for operations that are outlined in the PDEIS.

The federal policy toward our ancestor's remains and cultural and spiritual objects has been, in a word, genocidal. Toward the conclusion of the nineteenth century, federal policy toward the Missouri basin's Indian Nations began changing from military suppression to cultural and religious suppression.

In 1894 and 1904, the United States Department of the Interior issued Regulations of the Indian Office, specifically outlawing Native religious practices. These prohibitions which were never withdrawn, forbade the Sun Dance and 'all other similar dances and so-called religious ceremonies.' imposing penalties of ration withholding for up to thirty days. Traditional give-away ceremonies were also singled out, with offenders subject to thirty days imprisonment, noting that 'it shall not be considered a sufficient or satisfactory answer to any of the offenses set forth in the rule that the party charged was at the time a mourner, and thereby justified in taking or destroying the property in accordance with the custom or rites of the Tribe...' On the reservations, the practices of a so-called 'medicine man' were seen as a 'hindrance to the civilization of a Tribe...' Harjo, Native Peoples' Cultural and Human Rights: An Unfinished Agenda, 24 Ariz. St. L.J. 321, 322-323 (1992), citing Secretary of the Interior, U.S. Department of the Interior, Regulations of the Indian Office s 584, at 102-103 (1904).

Thus, at the turn of the century, it was official federal policy to treat the practitioners of native religions as criminals.

Meanwhile, Indian children were forcibly removed from their homes and families, and placed in Christian boarding schools. They were forbidden to wear their customary long or braided hair, clothing, or to speak their language. Religious and cultural items were taken from them. During this period, the suicide rates among Indian youths increased dramatically. Today, it remains several times the rate of non-Indian youths.

In addition, during this period the theft of Indian remains and cultural objects became common. Generally, state laws protect graves from vandalism and desecration. All fifty states have such laws, and the theft or desecration of non-Indian cemeteries is not a significant problem.

Unfortunately, such legal protections-which most citizens take for granted-have failed to protect the graves and the dead of Native people. Massive numbers of Indian dead have been dug up from their graves and carried away. National estimates are that between 100,000 and two million deceased native people have been dug up from their graves for storage or display by government agencies, museums, universities, and tourist attractions. Echo-Hawk and Trope, Native American Graves Repatriation Act. Background and Legislative history, 24 Ariz. St. L.J. 35, 39 (1992).

This ugly historical development is not a matter of a few thieves or panhandlers. It has been federal policy, carried out by federal agencies such as the Corps of Engineers, and federally supported museums such as the Smithsonian. This policy was reflected in the Antiquities Act of 1906, which defines Indian graves on federal lands as "archaeological resources," and as federal property. 16 USC 431-433.

5.3 Indian Remains and Cultural Resources Along The Missouri River

As stated above, many Sioux and other Tribes established communities in the Missouri River bottomlands. Thus, the construction and operation of the Missouri River main stem dams and reservoirs significantly impacts our ancestor's remains and other cultural resources.

The impacts of Pick-Sloan on Indian burial grounds and cultural resources have been devastating. A series of Congressional acts passed on September 2, 1958, authorized the acquisition by the COE of Tribal land, for the Fort Randall and Oahe projects. These acts required the Corps of Engineers to relocate Indian cemeteries in the taken areas. Yet the Corps failed to do so, and when the flood gates closed and water levels began to rise, human remains surfaced through the mud. Similarly, today, remains and cultural items surface as a result of erosion caused by the regulation of the reservoir, or the fluctuations in water levels.

In the PDEIS, the corps recognized the existence of "historic properties" along the reservoirs. The Corps identifies 158 sites at Fort Peck, 676 at Lake Sakakawea and 945 at Lake Oahe. Data for the sites at Lake Sharpe, Lake Frances Case, and Lewis and Clarke Lake has not been provided. In the assessment of alternatives for system operations, the Corps identifies the impacts on those sites that are impacted by fluctuating lake levels.

Nevertheless, the entire framework for these analyses is flawed, for several reasons. First, there is a substantial amount of information in this area which the COE does not possess. This results from the inadequate consultation between Corps archaeologists and the basins' Indians, for over 30 years. In addition, for those sites which have been identified, there is a concern that the COE does not properly identify the significance of the sites.

For example, a site was recently discovered on a Reservation along the Missouri River. The site included a ring of objects, which the Corps identified as a tipi ring, with no cultural significance. The Indian representatives properly identified the site's historic use and significance. It was a sacred area, utilized for fasting and visions. The Corps of Engineers had failed to properly identify a site which holds substantial religious and cultural significance to the people on whose Reservation the site is located. In the Corps' scheme of reservoir regulations, it would have entirely overlooked this area, and managed the water resource and COE project lands without conferring any consideration on the need to protect it.

Second, there has been inadequate generally consideration on the impact of the system operations on those sites in the fluctuation zone. These sites are very, very important to our people. Yet, they are treated no differently than, say, a marina, in the regulation of the reservoirs.

Third, there is no assessment in the PDEIS of the need to manage COE project land in a manner beneficial to our cultural sites and graves. The management of the project lands should be integrated with the management of the water resource, for the protection of these sites. The current management scheme fails to do so. For example, at the confluence of the Missouri and Grand Rivers on the Standing Rock Indian Reservation, the Oahe project resulted in the

formation of an island. There is an important cultural site on this island. Directly adjacent to this site, the Corps has leased a tract of land to a private, non-Indian developer. In addition, the Corps has developed the ironically-named Indian Memorial Recreation Area, directly adjacent to the culturally significant area.

Ultimately, the water and land management schemes must be integrated for the protection of Indian remains and cultural resources. The protection of these sites must be a priority of an integrated management scheme. Numerous treaties and the Archaeological Resources Protection Act of 1979 (16 USC 470aa-470ll) and Native American Graves Protection and Repatriation Act (25 USC 3002 *et seq*) require such protection. The alternatives outlined in the PDEIS fail to elevate this issue as a priority, thereby violating treaties and federal law.

Finally, the COE's long term model for operation of the system purports to incorporate the "value" of our ancestors remains and cultural objects into a computer model for alternatives for system operations. This preposterous notion must be rejected. Instead, the COE must work in close coordination with the Tribes to identify the culturally significant areas, and establish models for reservoir regulations that will protect them.

The Department of the Interior's current interpretation of NAGPRA provides for Tribal ownership and determination of the disposition of remains and cultural objects, only within aboriginal Indian lands as defined by the Indian Claims Commission. Much of the Missouri River basin constitutes aboriginal Indian land, under this definition. However, there may be land along the Missouri River which does not fall within the ICC definition of aboriginal land. The COE should develop a more expansive interpretation of aboriginal lands, in consultation with the Tribes, for the purpose of implementing NAGPRA along the Missouri River.

5.4 COE - Tribal MOA In North Dakota

There has been serious discussion on the repatriation of human remains and the protection of cultural resources on COE project lands, between the Corps and the North Dakota Tribal Reinterment Committee. The Tribal representatives approached these discussion with the following principles:

1. We are categorically opposed to the excavation, curation and study of all Indian remains and grave goods found in our homelands. We submit that these activities are ethnocentric and extremely racist, and violate our religious beliefs.
2. We want released to us all excavated ancestors and their personal belongings taken from our homelands for immediate reburial on Indian lands.
3. We reject any arguments that scientific analysis must be done on remains to establish tribal identity and assert that we do not have to prove we are related to Indian remains taken from our homelands. We further submit that there is no scientific test available today which conclusively identifies Indian remains as to tribal origin, and that any such findings made by science are strictly of a speculative nature.

4. There will be no subsequent disinterment of reburied ancestors or their belongings taken from our homelands for further study in the future.
5. The bodies and belongings of our relatives are not the property of any individual, institution, or government.

These principles stand for the proposition that the human remains and cultural objects of native people on our aboriginal homelands belong to the native people. They do not belong to the Corps of Engineers, or any other federal agency or private party. They shall not become the object of academic study. They are sacred.

The repatriation of remains and cultural objects must be performed in accordance with the cultural paradigms of the native people. The Corps of Engineers and other federal agencies simply do not comprehend the significance, from the native perspective, of remains, cultural objects and sacred areas. There is no understanding of the significance of locations chosen for religious ceremonies, or the cultural objects used in the ceremonies. Only the Indian people can understand these things. Accordingly, they must be treated according to the paradigms of the Indians—not according to the COE regulations, or the PDEIS as currently developed.

The COE should listen to what the Indian people are saying on this vital issue, and incorporate the Tribal values into a program for the proper reinterment of human remains. There is precedent for this in the recent Memorandum of Agreement negotiated between the COE and North Dakota Tribal Reinterment Committee.

The pressing nature of this issue resulted in long, difficult negotiations between the Corps and representatives of the North Dakota Tribes. It implements the Native American Graves Protection and Repatriation Act (NAGPRA), 25 USC 3002 *et seq*, on COE project lands in North Dakota.

At this point, the COE should take two steps. First there should be consultation with Tribes in other states, based upon these principles. Comparable agreements should be entered into. Second, the COE should provide funding for repatriation of human remains and protection for native cultural resources. The COE has long provided funding for wildlife mitigation, recreation development and other project functions serving non-Indians. The time is long overdue to mitigate the damage done by the Corps projects on native cultural resources.

5.5 Conclusion

It has long been the policy of the federal government to destroy the culture and economy of the Indian people. This destruction has taken many forms. In the Missouri River basin, it has taken the form of the Missouri River basin Pick-Sloan project. Our traditional communities were flooded. Pick-Sloan destroyed our subsistence economy, lifeways and sacred areas. No other group of people on earth have suffered so much, so that a public works project could be built.

Now, of course, issues have been raised concerning the operation of the project. Various interest groups want the COE to regulate the reservoirs in a manner that benefits their respective interest. The native people impacted by the Pick-Sloan are not an interest group. We are nations, and have treaties with the United States. We are merely asking that the treaties be honored in the regulation of the reservoirs and administration of project lands. Specifically, the PDEIS should develop criteria for water management that ensures protection of our remains and cultural objects. The Corps of Engineers should operate its projects in a manner which protects these areas.

Our treaties require the Corps to do so. Unfortunately, the PDEIS entirely fails to protect our ancestors' remains, sacred sites and cultural objects. It does not provide a realistic framework of the protection of these resources. It must be rejected, and a new model developed. We are simply asking that the Corps of Engineers respect our basic rights as humans, to exercise our culture and our religion. The treaties guarantee these rights. "Great Nations, like great men, should keep their word." Federal Power Commission v. Tuscarora Indian Nation, 362 U.S. 99, 142 (1970), (Black, J., dissenting.)

6. MISSOURI RIVER PDEIS FISH AND WILDLIFE COMMENTS

The Missouri River and its tributaries provide an immense natural resource. It drains one-sixth of the Nation, and its 530,000 square mile basin is over 2,300 miles long. There are 28 major reservoirs in the basin, including the third, fourth, and fifth largest in the United States. Seven hydropower plants use the river for power generation, and 17 other power plants use the river for cooling purposes. Nearly four million people use the river for their water supply. Missouri River fisheries generate about 5 million recreational visits each year valued at \$175,000,000. The Missouri River serves as a major breeding and wintering area and a migration corridor for waterfowl and many other species of migratory birds. There are approximately 60 species of mammals, 150 species of fish, 300 species of birds, 500 species of reptiles and amphibians and 5 to 50 Endangered Species that may be adversely affected by operation of the system.

Over the past 50 years, more than 90 percent of the sandbar and wetland habitats have been lost along the Missouri River. Over three million acres or two-thirds of the wooded bottomlands have been inundated or converted to other uses. As a result, a number of species are recognized locally as eliminated or severely depleted, and 50 species of plants and animals are now listed or under review for Federal listing as threatened or endangered (Fish and Wildlife Service, 1991).

The above numbers are staggering especially when coupled with the 307 alternatives listed in the PDEIS. However, an attempt must be made to understand the relationship of the Missouri River, its indigenous fish and wildlife populations (and their habitats) and the impact of future management of the Missouri River system by the ACOE. Equally important is an understanding that a significant portion of the water required for present management of environmental resources and endangered species is derived from *Winters* doctrine rights of the Missouri River Basin tribes.

6.1 Historical Information

The Missouri River served as a travelway across the Great Plains for thousands of years (Hess, 1989). Work began to "improve" the river in 1838 to remove snags for shallow drafted steamboats (Hess, 1989). For the next 50 years, river travel was crucial to exploiting the new frontier, and improvement of the river for passage of the steam powered river boats to haul people upriver and furs back down fell upon the federal government (Hart, 1957). Louis and Clark's journals of 1802-1804 contain many descriptions of wildlife, fish and plants never before described. John James Audubon traveled the river by steamboat in 1843 and marveled at the bird life he observed. Audubon and his close friend, Edward Harris, documented by drawings and paintings the flora and fauna of the Missouri River (Peterson, 1988). During the steamboat era, vast stands of timber were cut along the river to provide wood for fuel. Clearing of the forests probably allowed the river to react differently to flooding during dry and wet cycles. The channel was shortened and many oxbows and floodplain lakes were separated from the channel in the high flow years of the 1880s (Hallberg, 1979).

In the late 1880's and early 1890's, the basin went through significant changes resulting from the drought of the early 1890's and the demand for goods in the expanding great plains. Congress approved a provision to cut off river side channels and place structures along the channel border in the lower river to constrict the flow and develop deeper and a more predictable river channel for navigation from St. Louis to Kansas City (Hart, 1957). In 1927, the channel concept was extended another 400 miles to Sioux City, Iowa (Williams, 1951) relying in part upon the lands and Missouri River channel of the Omaha and Winnebago. In the 1930's drought again hit the Great Plains. Navigation on the lower river became threatened and the first of the big dams, Fort Peck, was authorized in 1933. The drought, however, had set the stage for a major battle over use of the Missouri River. Upper basin interests hoped to store the "wasted" water and use it to stabilize agriculture (Keenlyne, 1991). The ACOE submitted its plan (Pick Plan) to Congress for development of the Missouri River basin before the Bureau of Reclamation (BR) submitted its Sloan Plan, which resulted in its plan receiving the greatest consideration (Williams, 1951) The marriage of the two agency proposals, after much fighting, was consummated in the 1944 Flood Control Act, commonly referred to as the Pick-Sloan Plan. The fact that this plan never addressed that there was not (nor never had been) enough water to do everything people perceived to be part of the plan did not seem to bother the people involved. However, before the question of whether there was enough water to achieve all of the perceived promises of the Pick-Sloan Act, plans were made to begin to build a nine-foot navigation canal from Sioux City to the mouth of the Missouri River.

Upper states, realizing that it would take about fifty percent more water to maintain the deeper canal, took up arms (Guhin, 1985). The upper states finally agreed to the O'Mahoney-Millikin Amendment of the 1944 Act, that they thought would protect their consumptive use of Missouri River water.

In analyzing the history of the Missouri River, we find that the early removal of snags probably removed niches for a number of riverine species and altered the ability to trap energy at the lowest stages of the food chain (Pfieger and Grace, 1987). Channel structures and cutoffs reduced the lower river length by eight percent and water surface by fifty percent (Funk and Robinson, 1974). The increase in currents, loss of backwater areas, and resulting change in bottom configuration and substrate caused a decline in species diversity over a wide range of aquatic life (Pfieger and Grace, 1987). Loss of overbank flooding, due to the dams, eliminated the major source of energy to the lower river (Hesse, 1989). The net result has been a major loss of biodiversity in the lower river and a loss of productivity which starts at the lowest level of the food chain (Keenlyne, 1991). The upper river is not much better off. 755 miles of the upper river have been permanently committed to the ACOE's flood control reservoirs to protect 811 miles of the lower river from flooding (Sveum, 1988). About half the upper river is now converted into slack water river-lakes (Keenlyne, 1991).

After a period of high productivity due to flooding of the wooded bottoms and the rich prairie soil, production on the upper system has greatly taper off and is continuing to decline (Hesse, 1989) Blocking of the river by dams lead to the decline and possibly, elimination of the large fish species including sturgeon and paddlefish (Petts, 1989). Creation of reservoirs and lack of overflow in downstream reaches of the dams leads to replacement of vegetation spawning species by pelagic species (Welcomme, 1989). The result is loss of biodiversity in the

impounded section of the river as well as in the remaining downstream sections where channel degradation continues to cause loss of critical backwater habitats (Hesse, 1989)

The following comments are general in nature and do not relate to any one page or paragraph, but rather to the tone of the document and how it was developed and presented.

The ACOE fails to recognize or consider the tribe's interest or rights in future development and economic growth as it relates to Missouri River water requirements for fish, wildlife or related habitats. The final EIS should address these needs and how they would affect the ACOE's operation of the Missouri River system.

The present plan revolves around maximum benefits to navigation. In the PDEIS, the ACOE should try to balance navigation with other uses. In addition to the requirements of the Endangered Species Act, goals presented in Indian, States and federal comprehensive recreation plans should be addressed. The reliance on water resources and water rights of the tribes to meet requirements of the Endangered Species Act should be addressed.

6.2 Water Quality

While the ACOE mentions the problems of low dissolved oxygen and chemicals within the river, although the water quality is rated as Class II (generally good), no studies have been performed to evaluate possible solutions to these problems. Low dissolved oxygen (<5 mg/l) within riverine and reservoir environment results in reduced growth rates of fishes, reduced fish assemblages, or even fish kills as well as damage to other aquatic organisms. Installation of turbine venting, oxygen injection, etc. may be necessary to remedy the problem. These problems and associated possible solutions should be addressed in the PDEIS. The lack of multiple level outlets in a dam should not preclude an investigation of ways to correct this problem.

In addition, to have suitable water quality in the tailwaters, instream flow recommendations, based on a habitat specific model, should be developed for all of the tailwaters.

Heavy metals and pesticides have been found within the Missouri River drainage. Many of these chemicals accumulate within the tissues of fish and wildlife species that use these areas. The ACOE, in cooperation with the Tribes, States and EPA, should conduct tissue analyses within the areas where elevated levels of dangerous chemicals within fish and wildlife have been found. Health advisories may be needed to prevent consumption of fish and wildlife in some areas.

The ACOE states that sediment transport has been altered by construction and operation of the dams on the Missouri River. However, no sediment management plan has been presented to address this problem. Sediment accumulation within the reservoirs will decrease the capacity of the lakes and may also interfere with navigation and flood control. The ACOE did state in the preliminary draft that "Sediment deposition is significant at the mouth of the Grand River and that average bed elevation increased from two to six feet since 1958. Cutbanks are eroding at the rate as high as 23 feet per year."

Studies on Big Bend Reservoir, by Betts, found that riparian habitat was being lost at the rate of 4 to 8 feet per year and that shoreline erosion has reached the point that wildlife food plots planted just a few years before were falling into the Missouri River.

We could not locate discussion relating to the use of the Missouri River as a major raw source for potable water needs, or discharge of poorly treated sewage. Wildlife and human species health is directly related to water quality.

In addition, to have suitable water quality in the tailwaters, instream flow recommendations, based on a habitat specific model, should be developed for all of the tailwaters.

6.3 Endangered Species

The document mentions the presence of threatened and endangered species within the study area, but does not describe how the proposed alternatives would protect these species and their habitat.

PALLID STURGEON (*Scaphirhynchus albus*): The pallid sturgeon was listed as endangered in 1990. They were not identified as a separate species until 1905, resulting in sparse historical data. They appeared to be somewhat common as late as the 1950's and 1960's. Observation data from the Missouri River and its tributaries in the Dakotas and Montana reflect their population trend:

<u>Time Period</u>	<u>Average Observations Per Year*</u>
1960's	50
1970's	21
1980's	6

*From U.S. Fish and Wildlife Service documents.

The present status of the pallid sturgeon is that only small portions of their former range contain individuals. No reproduction has been reported in South Dakota in more than a decade, adults were located below the Oahe and Fort Randall Dams in 1992.

The reasons for the decline is that all of the 3,550 river miles that the pallid sturgeon inhabits have been significantly affected by man. Approximately 28 percent of the affected area has been impounded, which has created unsuitable lake-like habitat, 51 per cent of the area has been channelized, and the remaining 21 percent of the historic habitat is below dams. In the latter 21 percent, the water released from dams has reduced silt loads and caused runoff patterns and colder temperature, all of which are believed to be detrimental to pallid sturgeon (Pallid Sturgeon Recovery Plan, FWS, 1993).

The Executive Summary on page 2, Volume 7C, states that mainstream dams block the natural migration of fish such as the sturgeon and paddlefish. However, there are no specific numbers, remedies or solutions offered. In fact, all of Volume 7C is rather ambiguous in nature.

Since pallid sturgeon readily hybridize with shovelnose sturgeon researchers who were recently successful in taking eggs and artificially raising what they thought were pallid sturgeon were disappointed to find out that they had not developed a pure pallid sturgeon gene pool. It appears that the fate of this endangered species lies with the ACOE and its plans for the Missouri River.

LEAST TERN (*Sterna antillarum*): This bird was listed in 1985. Its present status on the Missouri River is that it is found mainly on the main river and along the Cheyenne River. There are approximately 200 breeding pairs in South Dakota. The least tern utilizes sparsely vegetated sandbars and beaches for nesting, raising young and loafing habitat.

The interior population of the least tern has declined due to loss of habitat from dam construction and river channelization. Terns utilizing the remaining sandbars on the Missouri River are susceptible to human activities, predation, and water fluctuations as the result of dam operation. Cold water temperatures due to reservoirs also affect the quantity of forage fish available (Interior Population of the Least Tern Recovery Plan, FWS, 1990).

References concerning the Least Tern found within the PDEIS relate mainly to their nesting and sandbar habitat, but fail to address food supply and its relationship to river flows. Sandbars, one of the principle components of the least tern's habitat requirements were lost through channelization of the lower river, impoundment of much of the upper river and degradation below most of the dams. Ninety (90) percent of the sandbars and 75 percent of the backwater areas have been eliminated on the Missouri River over the last 50 years (Keenlyne, 1991).

PIPING PLOVER (*Charadrius melodus*): This species was also listed as endangered in 1985. The Great Plains population (one of three distinct populations in North America) numbers about 1,372 breeding pairs. These plovers utilize the barren sand and gravel shores of rivers and lakes, particularly along the Missouri River. Habitat destruction is a major reason for the population decline. The construction of reservoirs on the Missouri River has resulted in a loss of sandbar habitat and water fluctuations as the result of dam operations is also detrimental (Great Plains Piping Plover Recovery Plan, FWS, 1988).

Food availability for young birds is also important; and can be traced back to the relationship of the river flow to fish production.

Unless conscientious effort is made to specifically improve the situation for the Least Tern and Piping Plover, the outlook is not bright.

BALD EAGLE (*Haliaeetus leucocephalus*): The Bald Eagle has been listed as endangered since 1978 in 43 states. They are abundant in Alaska and Canada. However, there are only about 2,500 breeding pairs in the lower 48 states. They were common along the Missouri River and its tributaries. Bald eagle populations declined in the early 20th century due to loss of habitat, shooting and trapping. Since the 1950's the use of pesticides became a major problem. Most of the forest habitat along the Missouri River was destroyed by the main-stem dams. What little forest habitat remains is threatened by clearing in order to build riverside developments (Northern States Bald Eagle Recovery Plan, FWS, 1983).

The PDEIS stated that 10 Bald Eagles wintered on Lake Oahe in 1988. A check of the Resource Management Inventory, S.D. Game, Fish and Parks, 1997, and the ACOE Natural Resources Management Handbook, 1989, resulted in the following ACOE Lake Oahe management units being identified as Bald Eagle wintering areas, resting areas or roost sites: 1, 6, 14, 19, 21, 23, 27, 79, 80, 96, 102, 103, 115, 116, 118, 119, 121, 123, 124, 131, 132, 133, 135, 136, 138, 139, 140, 141, 144, 146, 147, 148, 151, 152, 155, 156, 157 and 158. These 38 units, including Units 152, 155, 156 and 158, which are identified by the U.S. Fish and Wildlife Service as important winter habitat, comprise many acres of Lake Oahe shoreline. It is inconceivable that only 10 Bald Eagles are wintering along Lake Oahe.

OTHER RARE, THREATENED OR ENDANGERED SPECIES: Although not specifically mentioned in the PDEIS, there are many other species of special concern including: river otter, peregrine falcon, osprey, whooping crane, buff-breasted sandpiper, prairie falcon, false map turtle, spiny softshell turtle, eastern hognose snake, lake sturgeon, paddlefish, sturgeon chub, sicklefish chub, blue sucker, northern redbelly dace, skipjack herring and American Eel. The South Dakota Natural Heritage Program developed this list of species which may need protection and are targets for inventory efforts (Houtcooper, 1985).

There appear to be serious problems between the U.S. Fish and Wildlife Service and the ACOE concerning endangered species, see the U.S. F.W.S. Study Input document, page 23. The F.W.S. states: "Conservation and recovery of endangered species must be addressed. ACOE must elevate the priority of fish and wildlife resources", page 24. These statements are supported by the Solicitors Office letter of October 19, 1992 to the ACOE. The F.W.S. letter of March, 1993 to ACOE contains very strong language that the ACOE had better pick the right alternatives. Irrespective of the alternative chosen, the PDEIS must identify the *Winters* doctrine water rights of the tribes relied upon in the total water supply made available to endangered species in order for decision makers to properly evaluate alternatives and the future dependability of the water supply.

6.4 Fish

There is no question that the reservoirs inundated large portions of riverine habitats and changed habitat of the unimpounded reaches of the river. The primary changes in the unimpounded reaches include reduced turbidity, lowered temperatures, altered flows, reduced sediment load, and in many areas a degraded main channel with corresponding loss of shallow-water and back water habitat. Fish migrations have been affected which has probably affected the population level and the distribution of spawning areas of many species. Populations

of the species that continue to live and reproduce in the river have become isolated. Many new species of fish have entered the river over the years, either naturally or introduced by man, in response to changing habitats. Some species have declined in numbers because of the habitat changes and competition from the newly introduced species.

An interesting study by Nelson, 1980, contains information on the time and location of spawning, food of larve and habitats used as nursery areas by young-of-the-year fishes in Lake Oahe. He completed this study from 1972-75 and used the Grand, Moreau and Cheyenne Rivers as sampling locations. He found that the most heavily used spawning areas were the rivers and their embayments, which were the exclusive spawning ground for five species: goldeye, walleye, sauger, white sucker and minnows. and the major spawning ground for three others: white bass, buffalo and carp. He concluded that success of reservoir-spawning species was primarily dependent on above-average water levels, which inundated terrestrial vegetation. He stated: "preserving adequate streamflow and enhancing reservoir shoreline areas by managing water levels, seeding vegetation and eliminating grazing along shore would probably ensure adequate reproduction of most species."

The PDEIS leaves the reviewer with the impression that all things can be cured with a fish stocking program. Walleye, northern pike, catfish, white bass and yellow perch have never been stocked. Salmonids, and a few other species, have been stocked to determine their ability to adjust to Missouri River waters and fill unused niches. However, habitat and its quality remains the key to a successful fishery within the Missouri River system. The evaluation of operation alternatives based on young-of-the-year fish production assumes that the fish populations are limited only by reproduction. In addition, the best model for production involves huge drops in pool level from Spring to Summer. There appears to be a definite modeling problem because brood fish seek out vegetation or other habitat to lay their eggs and lowering of the reservoir would result in death of the eggs or fry, if they could not quickly move. It seems more logical to have rising or constant water levels during Spring spawning and egg incubation. It is likely that habitat, competition, and abiotic factors contribute to the diversity and abundance of the fish communities. Selection of an alternative should evaluate these factors for both riverine and reservoir fishes.

The State of South Dakota long range goals for Lake Oahe are:

1. Protect and enhance fishery resources and recreational opportunities.
2. Increase sport fishery to 250,000 angling days by 1995.
3. Maintain sport harvest rates at that level.

These are not necessarily the goals of the tribe's residing along Lake Oahe. In fact; the tribe's goals may be completely different and may include using the fishery resource for subsistence, aquaculture endeavors or other uses. However; the ACOE failed to determine what the tribes desires are and therefore automatically fails to address them in the PDEIS. Reliance upon *Winters* doctrine water rights must also be addressed.

6.5 Wildlife

Nearly 860 species of wildlife (mammals, reptiles, birds, amphibians) are known to have inhabited the area inundated by the Missouri River. Approximately half of them require a riparian habitat within their range for survival or reproduction.

Most bird species suffered significant losses, especially those species that nested on the bottom lands. Mammals depended heavily upon the bottom lands for a source of food and cover. Some required hollow trees for nesting, denning, and roosting places. Amphibians and reptiles required the moist understory of the bottomlands or the riverine wetlands.

The ACOE calculated the following population losses for deer, pheasant and grouse on Lake Oahe and Lake Sharpe:

NET POPULATION LOSSES AMONG THREE GAME SPECIES*

SPECIES	LOSSES	GAINS	NET LOSS
White-tailed Deer	6,390	140	6,250
Ring-necked Pheasant	28,860	670	28,190
Sharp-tailed Grouse	17,720	360	17,360

*Fish and Wildlife Mitigation, Lake Oahe and Lake Sharpe, South Dakota. ACOE, Omaha District, January, 1993.

The gains can be explained by habitat improvements on project lands since first operation.

Upland game birds including; wild turkey, prairie chicken, sharp-tailed grouse, ring-necked pheasant, mourning dove and gray partridge have been adversely affected by the reservoir impoundment because of loss of woody habitat. Populations of these species remain relatively low.

6.6 Habitat

As stated before, through channelization of the lower river, impoundment of much of the upper river and degradation below most of the dams, today's Missouri River cannot be compared to the Missouri River of yesterday. The vegetation before inundation categories were: cropland - 3 percent, grasslands - 60 percent, woodland and brush - 33 percent, marsh - 1 percent and sandbars - 3 percent according to the ACOE. Of course, depending upon the water level virtually all of this vegetation has been lost. The ACOE has developed mitigation plans to replace these lost habitats. Unfortunately, on May 23, 1993, the Washington office of the ACOE rejected the Omaha District's Lake Oahe and Lake Sharpe mitigation plan and returned it to Omaha for reworking. This possibly means years of waiting before a new mitigation plan is ready for Washington approval.

A October 26, 1992 letter from Bovee to the ACOE criticized use of the Comparison Standard River System (CSRS) for habitat analysis. He stated that there were problems with pre-project cross sections calibrated to post-project hydraulics to develop the CSRS criteria. He recommended the following:

1. Write a separate section detailing the procedures used in developing the CSRS.
2. In the event that the CSRS cannot be reconstructed with an acceptable level of accuracy, perhaps another alternative could be identified and used.

The volume entitled "U.S. Fish and Wildlife Service Study Input, May, 1993, contains important information on habitat and should be referred to for details. The Service's approach to focus on total ecosystem management is sound and includes studying: braided channels, riparian lands, chutes, sloughs, islands, sandbars, backwater areas, and floodplain natural communities.

6.7 General Comments

The present plan revolves around maximum benefits to navigation. This appears to hold true for the PDEIS. In the DEIS, the ACOE should try to balance navigation with other uses, including fish and wildlife resource management.

The ACOE fails to recognize or consider the water rights of any of the Indian Tribes within the basin. Future development and economic growth for tribes within the Missouri River basin relies on the water resources that they are entitled to use. As part of the DEIS, a plan for the identification of the various tribe's water requirements for such things as fish, wildlife, irrigation, habitat, cultural and domestic need should be presented. The final EIS should address these needs and how they would affect the ACOE operation of the Missouri River system.

Problems with the calibration and use of the assorted models presented in the PDEIS leaves the reviewer with the feeling that someone is trying to do a "snow job" with numbers and charts. Output files should be referenced and not included in the document.

An effort should be made to increase recreational opportunities on the Missouri River. With the exception of the tailwaters, very little access has been provided for outdoor recreationists. Recreational development would contribute greatly to local economies through increased tourism.

In the DEIS, the ACOE should select a preferred alternative based on Native American water needs, Endangered Species requirements, recreation, navigation, flood control, etc. Supporting documentation should be given for the selection of this preferred new operational scheme. Along with this selection, the mechanism to review and revise the manual every five years should be included in the best suited alternative.

The DEIS should identify the members of the different committees, teams, etc. Also, the role that each member played in developing the preferred alternative should be noted. This would help the reviewer to be able to have a better understanding of why a certain alternative was selected.

6.8 Summary

The upstream and downstream battles over water use continue today with little hope of resolution under existing infrastructure organization along the river (Thorson, 1989). As Hess, 1989, stated: "One day we will all have to collectively deal with insufficient water supply as our greatest threat." In the meantime, the river will continue to try to adjust its morphology until the time comes once again when it reclaims its valley. Let us hope we have not lost too many fish and wildlife species in the interim."

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The Chippewa Cree Tribe of the Rocky Boy's Reservation

Phone: (406)-395-4478 or 4210 - Finance Office
(406)-395-4282 or 4321 - Business Committee
A RESOLUTION

Rocky Boy Route, Box 544
Box Elder, MT 59521

No. 45-93

TO REQUEST FIELD HEARINGS ON THE ARMY CORPS OF ENGINEERS OPERATION OF THE MAIN STEM ON THE MISSOURI RIVER

WHEREAS, the Chippewa Cree Tribal Business Committee is the governing body of the Chippewa Cree Tribe of the Rocky Boy's Reservation by the authority of the Constitution and By-Laws of the Chippewa Cree Tribe, approved on the 23rd day of November, 1939, and,

WHEREAS, pursuant to the Constitution and By-Laws of the Chippewa Cree Tribal Business Committee is charged with the duty of protecting the health, security and general welfare of the Chippewa Cree Tribe, and,

WHEREAS, the Business Committee is fully aware of the crucial importance that water resources will play in the Tribe's economic future and therefore the need to fully protect the availability of that resource, and,

WHEREAS, the Army Corps of Engineers is in the process of reformulating the operation manual for the Main Stem DAMs along the Missouri River, and,

WHEREAS, the Chippewa Cree Tribe is directly impacted by the method utilized by the Army Corps of Engineers for the operation of the Main Stem Dams, and,

WHEREAS, the Chippewa Cree Tribe does not feel that the Army Corps of Engineers has included the Chippewa Cree Tribe and other tribes in the Missouri River Basin in the planning process and have not included tribal water resource information which will directly impact any plan for the operation of these facilities, and,

WHEREAS, the Army Corps of Engineers policy not to include the vital tribal water resources data and their potential impact on any plans adopted by the Army Corps of Engineers is detrimental to the tribes in the Missouri River Basin, and

WHEREAS, the Administration has gone on record to support and uphold a government to government relationship with the Indian tribes of this nation, and,

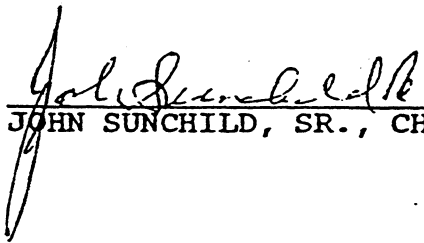
WHEREAS, the Army Corps of Engineers policy to treat the 28 tribes located in the Missouri River BASin as members of the general public and not as tribal governments is out of line with the policy of the Administration , and,

WHEREAS, this policy and their disregard of tribal water rights can cost the American taxpayers millions of dollars in the future,

THEREFORE BE IT RESOLVED, that the Chippewa Cree Tribe respectfully requests that the Congress of the United States of America, hold field hearings to examine the extent of these problems and the potential waste of tax dollars on a plan that will be worthless without the participation of the tribes and their potential impact on the water resources available in the basin

C E R T I F I C A T I O N

I, THE UNDERSIGNED AS SECRETARY/TREASURER OF THE BUSINESS COMMITTEE OF THE CHIPPEWA CREE TRIBE HEREBY CERTIFY THAT THE BUSINESS COMMITTEE IS COMPOSED OF NINE MEMBERS OF WHOM 7 MEMBERS CONSTITUTING A QUORUM WERE PRESENT AT A MEETING DULY AND REGULARLY CALLED, NOTICED, CONVENED, AND HELD THIS 19TH DAY OF APRIL, 1993, AND THAT THE FOREGOING RESOLUTION WAS ADOPTED AND SUCH MEETING, BY THE AFFIRMATIVE VOTE OF 6 MEMBER FOR AN 0 MEMBERS AGAINST AND THAT THIS RESOLUTION HAS NOT BEEN RESCINDED OR AMENDED IN ANY WAY.



JOHN SUNCHILD, SR., CHAIRMAN



JANICE MYERS, SECRETARY/TREASURER

DEVILS LAKE SIOUX TRIBE

P.O. BOX 359, FORT TOTTEN, NORTH DAKOTA 58335

PHONE: 701 - 766-4221



Elmer J. Belgarde, Jr.
Chairman

Carl Walking Eagle
Crowfoot Vice-Chair

Jeanette M. Herald
Secretary-Treasurer

Elmer White, Sr.
Mission District

William D. Cavanaugh
Woodlake District

Jerome McKey
Fort Totten District

JULY 30, 1993

DARREL WRIGHT, EXECUTIVE DIRECTOR
MNI-SOSE INTERTRIBAL WATER RIGHTS COALITION
818 E. ST. ANDREW ST.
P.O. BOX 226
RAPID CITY, S.D. 57709

DEAR MR. WRIGHT:

OUR TRIBE IS INDIRECTLY AFFECTED BY THE MIS-MANAGEMENT OF THE MISSOURI RIVER BY THE CORPS. THE TRIBE IS IN FAVOR OF DIVERTING MISSOURI RIVER WATER TO DEVILS LAKE, N.D. THIS DIVERSION WILL HAVE A FAVORABLE AND DIRECT ECONOMIC AND ENVIRONMENTAL IMPACT ON OUR TRIBE. AS YOU ARE WELL AWARE, THE DEVILS LAKE HAS NO OUTLET TO REFRESH ITSELF AND ALL THE AREA BASINS CHEMICAL RUN-OFF THAT SETTLES IN DEVILS LAKE.

OUR TRIBE HAS A TREATY WITH YOUR SUPERVISORS, THE CONGRESS OF THE UNITED STATES OF AMERICA. AND THROUGHOUT HISTORY, MANY STATUTES, LAWS, EXECUTIVE ORDERS AND REGULATIONS HAVE BEEN ESTABLISHED AND ENACTED FOR THE PROTECTION OF THE INDIAN NATIONS OF THE LAND WE BOTH SHARE. BUT UNFORTUNATELY FOR THE 'CORP' YOUR BUREAUCRATIC, IRRESPONSIBLE AND SHORT-SIGHTEDNESS HAVE CONSTANTLY NEGLECTED TO ABIDE BY ITS SUPERVISORS MANDATES. AND THEREBY YOU ARE IN THAT EDGE OF INSUBORDINATION!

THE CORPS HAS TAKEN UPON ITSELF TO BE THE MAIN PLAYER IN THE SCHEME OF ADMINISTERING THE MISSOURI RIVER. IN THE PROCESS HAVE LOOK UPON ITS FELLOW HUMAN BEINGS (INDIANS) AS A NUISANCE SUB-HUMAN AND SHOULD BE TERMINATED. THE CORPS HAS CONSTANTLY VIOLATED THE WATER RIGHTS OF THE AMERICAN INDIANS ALONG THE MISSOURI, AS WELLS, THROUGHOUT THE NATION. AND HAVE NEVER ONCE ACKNOWLEDGED THE WATER RIGHTS OF AMERICAN INDIANS. NOR HAVE YOU (CORP) EVEN OUT OF COURTESY, INVITED THE MANY INDIAN TRIBES ALONG THE MISSOURI TO PARTICIPATE IN THE DEVELOPMENT OF THE 'SO CALLED' MASTER MANUAL.

A1-229

JULY 30, 1993

PAGE 2.

YOU (CORP) HAVE TAKEN LAND WITHOUT REGARD TO ITS INDIAN OWNERSHIP AND FLOODED THOUSANDS OF PRIME PRISTINE LAND OF THE AMERICAN INDIAN TRIBES ALONG THE MISSOURI, THROUGH THE PROCESS OF DAM(S) CONSTRUCTION, TO JUSTIFY YOUR EXISTENCE AND PURPOSE BY ELIMINATING THE DAMS ALONG THE MISSOURI.

YOU (CORP) HAVE PROMISED INDIAN TRIBES TO SHARE IN THE HYDRO-POWER, BUT, AS OF TODAY THIS HAS NOT HAPPENED. I BELIEVE ITS ABOUT TIME THE TRIBES ALONG THE MISSOURI WHO HAVE DAMS FOR HYDROPOWER WITHIN THEIR EXTERIOR RESERVATION BOUNDARIES TAKE CONTROL OF THESE DAMS AND ADMINISTER THEM OURSELVES.

OUR TRIBE IS A MEMBER OF THE MNI-BOSE WATER COALITION OF RAPID CITY, SOUTH DAKOTA. IT IS OUR INTENT THAT THIS NEEDED ORGANIZATION MAKE SURE OUR WATER RIGHTS ARE NOT FURTHER VIOLATED AND TO SET-UP PARAMETERS TO SAFEGUARD OUR WATER RIGHTS NOW AND IN THE FUTURE.

WATER IS THE SOURCE OF LIFE. SHE'S AN INTRICATE PART OF MOTHER NATURE AND CANNOT BE ABUSED FOR SELFISH PURPOSES. WATER MUST BE SHARED AND MUTUALLY PROTECTED BY ALL.

THANK YOU.

Peter J. Belgarde, Jr by
PETER BELGARDE, TRIBAL CHAIRMAN

JS
Sec. Treasurer

NORTHERN CHEYENNE TRIBAL COUNCIL
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

RESOLUTION NO. 327 (93)

A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL REJECTING AND OPPOSING THE REVISED MASTER MANUAL OF THE UNITED STATES ARMY CORPS OF ENGINEERS AND TO REQUEST THE CONGRESS OF THE UNITED STATES TO PERMIT TRIBAL INPUT INTO THE REVISION PROCESS.

WHEREAS, the United States Army Corps of Engineers is revising its master manual to govern its operations and administration of the Missouri River Basin Pick-Sloan program, without the participation and involvement of all Indian Tribes whose homelands are located on or near the Missouri River Watershed System; and,

WHEREAS, the Northern Cheyenne Tribe located in southeastern Montana continue to live on their permanent home reservation, composed of some 475,000 acres, whose reservation is located within the Missouri River Watershed System on two tributaries of the Yellowstone River, the Rosebud Creek and the Tongue River; and,

WHEREAS, the Corps in its effort to revise the master manual, has not and will not give recognition to the sovereign status of the Northern Cheyenne Tribe including all other Indian tribes now located on the Missouri River Watershed System and as an agent of the United States Government does not give credence to the trust relationship between the United States Government and the Indian tribes; and,

WHEREAS, the Corps is simply ignoring the Winter's Rights of those Indian Tribes, including the Northern Cheyenne Tribe, who are dependent upon the waters that flow into the Missouri River, and through its revision effort has not calculated the Indian water allocations within the Pick Sloan Program; and,

WHEREAS, the efforts of the Corps to revise its master manual is not in keeping with the spirit of the National Environmental Protection Act to consult with Indian Tribes on significant impacts upon their respective cultural and socio-economic well being; now,

THEREFORE BE IT RESOLVED by the Northern Cheyenne Tribal Council that it hereby rejects and opposes the revision drafts and efforts of the United States Army Corps of Engineers, on the revised Master Manual of the Missouri River Mainstem System, based on the following findings:

1. It lacks recognition to the Indian sovereignty and the trust responsibility of the United States Government.
2. It lacks calculated allocations on Indian water.
3. It lacks accuracy on hydrologic projections.

RESOLUTION NO. 327 (93)
PAGE 2.

4. It ignores the economic benefits to Indian tribes and does not quantify the economic losses by Indian tribes since the implementation of the Pick Sloan program.
5. It fails to include projections on potential impacts upon Indian cultural and socio-economic parameters.

BE IT FURTHER RESOLVED by the Northern Cheyenne Tribal Council that it hereby petitions the Congress and the President of the United States that public hearings be scheduled and held by the United States Army Corps of Engineers to permit public participation and involvement in the revision and finalization of the Revised Master Manual.

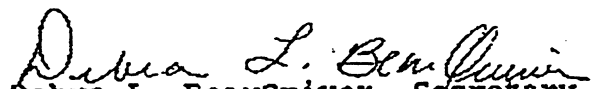
BE IT FINALLY RESOLVED by the Northern Cheyenne Tribal Council that the Corps be held accountable to the trust relationship between the United States government and the Indian tribes.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 17 votes for passage and adoption and no votes against passage and adoption this 21st day of September, 1993.



Llevando Fisher, President
Northern Cheyenne Tribal Council

ATTEST:



Debra L. Bearquiver, Secretary
Northern Cheyenne Tribal Council

MNI-SOSE INTERTRIBAL WATER RIGHTS COALITIONS' TESTIMONY

BEFORE THE

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

on

THE ARMY CORPS' OF ENGINEERS

MISSOURI RIVER MASTER WATER CONTROL MANUAL REVIEW PROCESS

PRESENTED BY DARYL WRIGHT

OCTOBER 11, 1993

GLENDIVE, MONTANA

Mr. Chairman, my name is Daryl Wright and I am the Executive Director of the Mni-Sose Inter Tribal Water Rights Coalition. On behalf of our Board of Directors, I would like to thank you and the Members of this Committee for the opportunity to testify on the Master Manual review process.

Mr Chairman, Our people believe that water is a gift from the Creator and represents the life blood of our people and the Earth, Our Mother. We are taught that our treatment of this gift must not be taken lightly and that we must always protect it so it can nourish our future generations. It is with great difficulty and regret that I stand before you today addressing water as if it had no life of its own and that, in order for me to protect the Creator's gift, I must present our concerns based on policy and law and not as the gift that it truly is.

While the tribes take their role as trustees of the Creator's gift as seriously as life itself, the federal government has a long

standing history of failing in its trust responsibilities to the tribes. With regard to the Master Manual review process, a prime example of the continuing failure by our trustee to protect our resources is reflected in a letter from the Office of the Secretary of Interior dated July 14, 1993. Signed by Jonathan Daeson and directed to the Acting Assistant Secretary of the Army, this letter fails to address the Corps grossly distorted and superficial treatment of tribal water interests in the PEDIS document. The only way we can interpret Interior's lack of concern is to state that it reflects the intent of the agencies of the United States to curtail any development of tribal water resources for the benefit of our tribal membership, and to allow development by the states, by competing federal interests, and by private water users to the detriment of Indian people.

By omitting any meaningful treatment of the tribes' substantial water rights, each of the 307 alternatives studied by the Corps will reinforce the continued reliance by the competing interests to waters that are clearly the vested rights of the tribes within the basin. It should be noted here, that the Corps went on record as beginning to recognize the rights of some tribes during their issues conference held last month in Omaha, Nebraska. Even so, the document will still not reflect a realistic estimate of tribal water requirements or the magnitude of their potential impacts, when those rights are ultimately put to beneficial use. Although we appreciate the Corps' attempts to recognize some of the tribes' water requirements, the evaluation of future depletions should be

based on entitlements of all of the tribes within the Basin. To do otherwise will compromise the validity and of the document and will not allow the document to meet the NEPA tests for Adequacy of Analysis. To be more specific on PDEIS issues, I offer the following comments:

1. The PDEIS fails to address the economic and environmental impacts on the Missouri River Basin reservations stemming from continued reliance by the United States upon the tribes' reserved Winters doctrine rights to the use of water.
2. Based on the present Master Control Manual operations, the PDEIS identifies current National Economic Development benefits at \$1.277 billion annually. It is respectfully submitted that the PDEIS is inadequate unless benefits are separated into those produced by the reserved rights of the Missouri River Basin Indian Tribes and those produced by the surplus water of the United States. Without the division of the NED benefits into those two sources, it is not possible to determine the reliance of the United States on unused reserved water rights of the Indian tribes to produce NED benefits.
3. A trust assessment is needed in the PDEIS to determine the impact of the Master Water Control Manual on the responsibilities of the United States to perform as trustee for the Missouri River Basin Tribes.
4. The Corps has understated the value of hydropower benefits on the mainstem system of dams by using the value of constructing and operating new thermal facilities to replace the power produced by

the mainstem hydropower system. Improvement in hydropower values is needed.

The Tribes in the Missouri River Basin have sacrificed more than any others to make the intent of the 1944 flood control act a reality. One asks what have we gained in return. While many believe that the tribes were justly compensated for the lands taken, I assure you that this has not been the case. Should the Tribes sit back and be content with the mud flats and erosion that threaten our homelands and the development of viable tribal economies? Should we be happy when the bodies of our ancestors continue to wash up onshore because our trustee did not follow up on the promises made to our people? Can our people find hope in knowing that our water resources generate mega watts of low-cost power that is marketed to others, while we pay some of the highest electrical rates in the country. Every day the tribes live with the adverse impacts to their homelands and we wonder if there is a trustee and why he does not hear our cry for help.

Mr.Chairman, the list of unfulfilled promises and impacts to our homelands is truly a tragedy and warrants further review by this committee, I urge you to honor the tribal requests for full Congressional hearings, so all the tribes in the basin can present specific testimony on how this process adversely impacts their communities.

Once again, on behalf of the Mni-Sose coalition, I thank you for this opportunity to present our views.

DOUG BEREUTER
1ST DISTRICT, NEBRASKA

2348 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2701
(202) 225-4806

COMMITTEE ON BANKING, FINANCE
AND URBAN AFFAIRS
SUBCOMMITTEES:
SING AND COMMUNITY DEVELOPMENT
ONSUMER CREDIT AND INSURANCE
INTERNATIONAL DEVELOPMENT,
FINANCE, TRADE AND MONETARY POLICY
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEES:
ERNATIONAL ECONOMIC POLICY AND TRADE
INTERNATIONAL SECURITY, INTERNATIONAL
ORGANIZATIONS AND HUMAN RIGHTS
LECT COMMITTEE ON INTELLIGENCE

Congress of the United States
House of Representatives
Washington, DC 20515-2701
December 28, 1993

DISTRICT OFFICES:
1045 K STREET
LINCOLN, NE 68508
(402) 438-1598

502 N. BROAD ST.
FREMONT, NE 68025
(402) 727-0888

EXPORT TASK FORCE

RURAL CAUCUS

ENVIRONMENTAL AND ENERGY
STUDY CONFERENCE

RURAL HEALTH CARE COALITION

Colonel John E. Schaufelberger
Division Engineer
Omaha Division
U.S. Army Corps of Engineers
12565 West Center Road
Omaha, Nebraska 68144

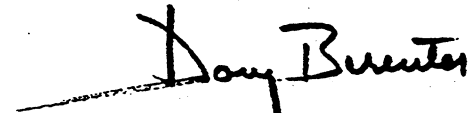
Dear Col. Schaufelberger:

I am enclosing a copy of a letter which I received from Mr. Mitchell Parker, Vice-Chairman of the Omaha Tribal Council, who has raised some questions concerning codification of tribal water rights and tribal input into the revision of the Master Manual for the Missouri River.

Could you review the issues raised in the enclosed letter and advise me of your findings? What is the Corps involvement, if any, with the codification of tribal water rights in the Missouri River Basin with special regard for the tribes in Nebraska? What can you tell me about the status of codification of Indian Water Rights for the Nebraska Tribes? How have the Omaha, Winnebago, Ponca, Santee Sioux, Sac-Fox, and Iowa Tribes been involved in the revision of the Master Manual for the Missouri River? How will they be involved in the future?

Thank you very much for your consideration and assistance on this matter.

Best wishes,



DOUG BEREUTER
Member of Congress

DB/jb

Enclosure

NPS 3-211453

OMAHA TRIBE OF NEBRASKA

P.O. Box 368
Macy, Nebraska 68039



Tribal Administration

RECEIVED

DEC 14 1993

DISTRICT
OFFICE

PH (402) 837-5391
FAX (402) 837-5308

EXECUTIVE OFFICERS

Dr. Rudi L. Mitchell, Chairman
Mitchell Parker, Vice-Chairman
L. Arnie Harlan, Treasurer
Nate J. Parker, Sr., Secretary

MEMBERS

Doran L. Morris, Sr.
Clyde Tyndall
Edward W. Webster

December 10, 1993

Douglas Bereuter, Congressman
100 Centennial Mall, North
Lincoln, Ne. 68508

RE: TRIBAL WATER RIGHTS

Dear Congressman Bereuter:

The Omaha Tribe is one of the original members of the Mni Sose Tribal Water Rights Coalition based in Rapid City, South Dakota. Mni Sose is a membership of 20 tribes with lands along the Missouri River.

Several tribes have been successful in formally claiming their water rights, while others are in the formative stages. One of the primary tasks of Mni Sose is to provide technical assistance to tribes involved in water rights negotiations. Other services include legal services, drafting of water codes, and geological surveys.

The Omaha Tribe is also an active member of the Nebraska Water Council initiated by Governor Nelson. The Water Council's task is to study conjunctive use issues concerning ground and surface water usage and recharge impacts.


The Omaha Tribe, in behalf of Mni Sose, would like to impress upon your office two positions: (1) the lifting of a moratorium for the approval of tribal water codes by the U.S. Department of Interior; and (2) direct input into the revised Master Manual developed by the U.S. Corp of Engineers.

As of early 1993, the Omaha Tribe completed its final draft of its Water Code. Under the moratorium, the Code cannot be fully implemented or recognized until this restriction is lifted. It is critical to the Omaha Tribe that this moratorium be lifted so that formal claims can be legitimized through the state and federal government.

In order to ensure that Tribes along the Missouri River Corridor provides information that protects their lands and rivers, it is imperative that they be allowed to voice their concerns at forums sponsored by the Corp of Engineers. The Tribes should have a large section of the Master Manual devoted to their concerns. The Corp should assist the Tribes in research, statistical data, and other forms of assistance to ensure this recommendation is carried out to the fullest extent.

Your office is in a position to ensure that these requirements are met. For more information on this topic, please contact Mr. Mitchell Parker, Vice-Chairman, Omaha Tribal Council (402) 837-5391.

Sincerely,

A handwritten signature in cursive script that reads "Mitchell Parker". The signature is written in dark ink and is positioned above the typed name.

**Mitchell Parker, Member
Omaha Tribal Council**

cc: Bruce Babbit, Secretary of the Interior

Tribal Correspondence 1994





MNI-SOSE Intertribal Water Rights Coalition, Inc.

Phone (605) 343-6054 - Fax (605) 343-4722
PO Box 226, 514 Mt. Rushmore Rd.
Rapid City, South Dakota 57709



March 29, 1994

Mr. Arvid Thomsen, Director
Civil Works and Planning
U.S. Army Corps of Engineer
12565 West Center Road
Omaha, Nebraska 68144-3869

Re: Missouri River Master Water Control Manual

Dear Mr. Thomsen:

On behalf of the 22 Tribes of the Mni Sose Intertribal Water Rights Coalition, I extend our appreciation your information concerning the Missouri River Master Water Control Manual release data.

The Coalition is available to the U.S. Army Corps of Engineers for coordination of information distribution of the Preferred Plan for the release of the Master Manual to the 28 Missouri River Basin Indian Tribes. The Coalition maintains a mailing list and Fax listing for all Tribes which includes Tribal Leaders, Tribal Committee Members, and Tribal Water Resource Staff.

The Coalition's Leadership is requesting that the Tribal Leadership be included on the release to the State Governors planned on April 27, 1994. This would allow the Tribal Leadership to respond to public inquiry.

The Coalition would be available to coordinate the three tentative meetings with Missouri River Basin Indian Tribes to introduce the Preferred Plan to the Tribal Governments.

Please contact me or Mr. Woody Corbine, Office Manager, at the above address or call (605) 343-6054 to arrange for information distribution to the Tribes and to discuss other arrangements related to the release of the Preferred Plan.

I would like to thank you and the U.S. Army Corps of Engineers for your assistance in assuring that Tribal concerns and issues were addressed in the Master Manual.

Sincerely,

Daryl Wright,
Executive Director



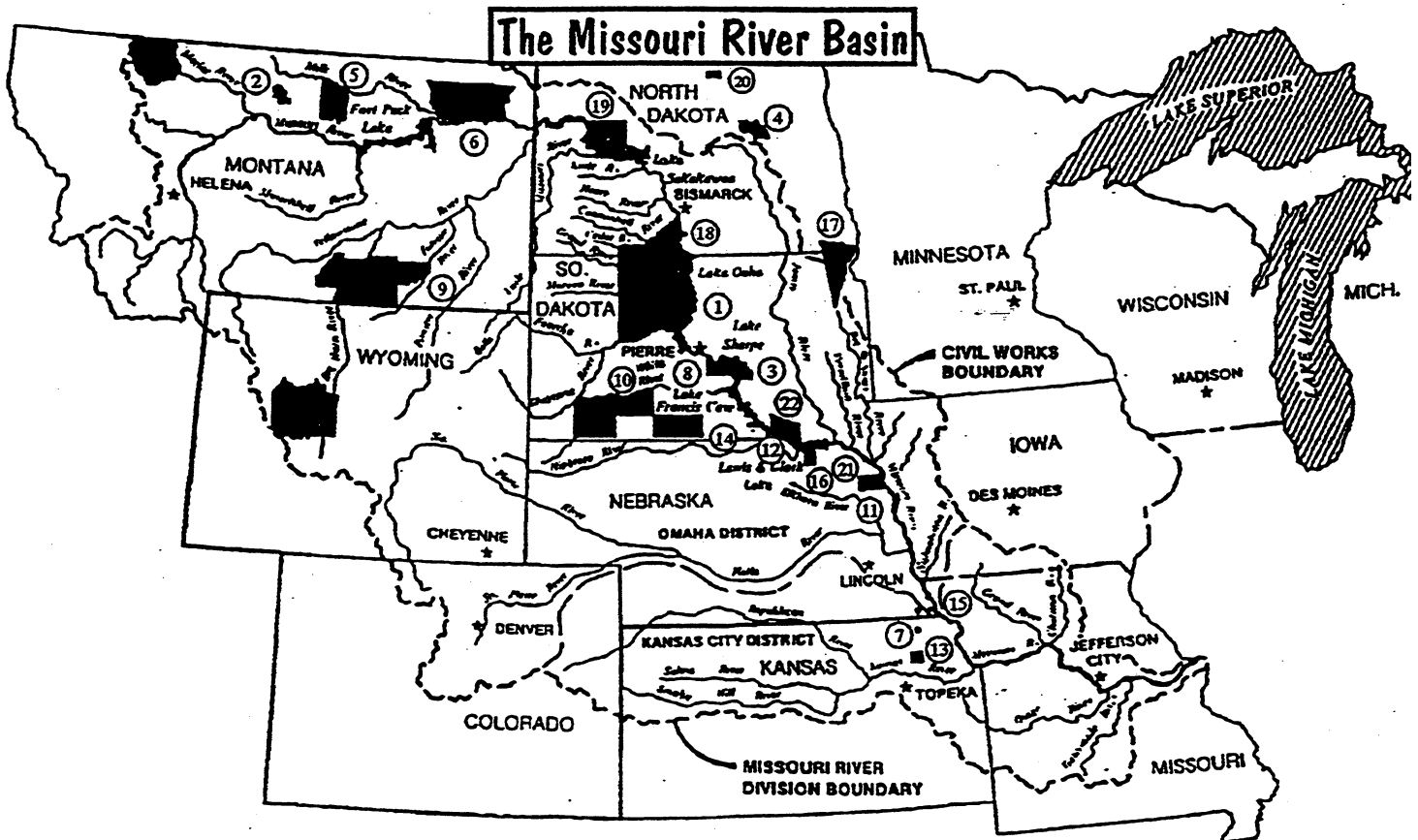
MINI SOSE



Inter-Tribal Water Rights Coalition, Inc.
 PO Box 226 Rapid City, SD 57709

(605) 343-6054 - (605) 343-4722 Fax

*Coalition's Response to
 Corps of Engineer's
 Preferred Alternative
 Plan
 June 6, 1994*



Board Members

- 1. Cheyenne River Sioux, 2. Chippewa-Cree, 3. Crow Creek Sioux, 4. Devils Lake Sioux, 5. Fort Belknap Indian Community, 6. Fort Peck Tribes, 7. Kickapoo of Kansas
- 8. Lower Brule Sioux, 9. Northern Cheyenne, 10. Oglala Sioux, 11. Omaha, 12. Ponca, 13. Prairie Band of Potawatomi, 14. Rosebud Sioux, 15. Sac & Fox of Missouri
- 16. Santee Sioux, 17. Standing Rock-Wahpeton, 18. Standing Rock Sioux, 19. Three Affiliated Tribes, 20. Turtle Mountain Chippewa, 21. Winnebago, 22. Yankton Sioux

MNI SOSE INTERTRIBAL WATER RIGHTS COALITION COALITION RESPONSE TO THE "PREFERRED ALTERNATIVE" PLAN

The Mni Sose Inter-Tribal Water Rights Coalition comprises the unified voice of 22 of the Indian Nations of the Missouri River Basin. The Missouri River Basin Indian Tribes possess extensive and valuable water rights to the Missouri River and its tributaries. Nevertheless, the Army Corps of Engineers has developed these resources for the benefit of the regional and national economies, irrespective of the Tribes' prior and paramount rights to the use of the water.

Missouri River Basin Pick-Sloan Project and Master Water Control Manual

The United States Army Corps of Engineers (COE), operates six massive earthen dams on the Missouri River's main stem, above Sioux City, Iowa. Approximately 350,000 acres of Indian land were taken by the COE and inundated for these projects. Ultimately, Pick-Sloan's contribution to the national economy, estimated by the COE in the Preliminary Draft Environmental Impact Statement (PDEIS) released in May, 1993, is to be \$1.3 billion annually, is in a very large component, dependent upon the Indian land taken for the Pick-Sloan and the Indian water utilized by the hydropower projects.

Nevertheless, the Preliminary Draft Environmental Impact Statement (PDEIS) outlined alternative methods for the integrated operation of the main stem dams, and none of the alternatives accounted for the water rights of the Missouri River Basin Tribes. Accordingly, when the COE Omaha Division met with the affected parties to discuss the PDEIS on October 29 - 30, 1993, Mni Sose Water Rights Coalition asserted that the alternatives for Pick-Sloan operations must account for the extensive Indian water rights existing in the Missouri River Basin. Consequently, Colonel Schaufelberger agreed that the Corps would do so. Needly to state, Mni Sose Coalition is extremely disappointed with the announcement by Colonel Schaufelberger that a preferred alternative has been selected for the upcoming DEIS without a response to the Coalition's request.

The preferred alternative appears to modify the storage and release patterns of the main stem dams slightly, so as to improve the nesting habitat for certain threatened and endangered species, at the expense of downstream navigation flows at certain times of the year. As with all of the alternatives contained in the PDEIS, it confers no consideration whatsoever for the consumptive and in-stream water rights of the Missouri River Basin Indian Tribes.

Again, the federal executive branch is conferring more respect for the preservation of certain species of wildlife than for the preservation of the way of life of the Indian people. Of course, water is integral to our way of life in the semi-arid Missouri River Basin. In

addition, the administration of water through the operation of the main stem dams affects numerous cultural resources and culturally significant areas. Yet these treaty and human rights are ignored by the COE in the preferred alternative, notwithstanding the commitments made by the Corps on September 29 - 30, 1993. For these reasons, and as is more fully define below, the Coalition is requesting that the preferred alternative be postponed, until such time as the computer modeling includes Indian consumptive and in-stream rights to water, and the need for the protection of cultural resources along the Missouri River.

Tribal Resource Contribution to Pick-Sloan

The twenty-eight tribes of the Missouri River Basin have contributed substantially to the Missouri River Pick-Sloan Program, since its inception. Indeed, Tribal water and land resources have been appropriate for use in the project, without compensation, and the Tribes have not received the benefits of the Pick-Sloan program, including water and power, as was initially intended. While the potential to realize benefits from the Pick-Sloan program still exists, current operation of the basin facilities are more of a detriment to Tribal land, water, and cultural resources than a true benefit.

One of the most disturbing features of the COE's development of the DEIS for the Missouri River Basin is the persistent failure of the COE to consider Indian water rights. At every turn, the Tribes have been told that Tribal water rights are included, yet when documents are produced, we see no evidence that serious consideration has been given to Tribal water rights and resources. The Tribes are unsure whether this lack of attention to Tribal water rights signifies the COE's intention to continually ignore substantial Tribal water rights, or whether the COE believes that Tribal water use will have minimal or no impact on the water resources of the Missouri River Basin.

In an effort to demonstrate the significant contribution of Tribal water to the Missouri River system, and to delineate the magnitude of impacts to the system from the use of Tribal water, the Mni Sose Coalition conducted an analysis of basin hydrology and flow contributions from each of the major subbasins to the Missouri River. In addition, the volume of water required to meet Tribal irrigation needs were estimated and flow amounts compared to available water in each subbasin of the Missouri River. The results, which are discussed below, demonstrate that Indian Tribes contribute as much as 40 percent of the water used for Missouri River Pick-Sloan projects, and, at certain points on the river system, the use of Tribal water for Tribal purposes could exceed 70 percent of the available water supply in particular reaches of the system. The sheer magnitude of the Tribal water right in the Missouri River system indicates that Tribal water use will have a significant impact on water availability in and the management and operational procedures for the Missouri River Basin System.

The 1982 Missouri River Basin States Association (MRBS) report on the Missouri River Basin planning identified eight major subbasins of the Missouri system, shown in Figure 1. In all of the subbasins except two, Reservation lands encompass important headwater and stream side locations, and further, overly important aquifer systems which are connected with the streams.

Of the 314.8 million acres which comprise the Missouri River Basin area, 12 million, or 3.4 percent of the land base is owned by Indian Tribes. However, Tribal lands contribute significantly to runoff produced in each subbasin, and most of the major subbasin tributaries flow through, border or originate on Reservation lands. Moreover, over 350,000 acres of Tribal lands throughout the basin have been inundated by COE flood control projects. Tribal water rights claims to these basins, which have yet to be practically realized, are significant, and consist of consumptive and non-consumptive uses. Actual use of Tribal water is expected to impact other water users on the Missouri River System.

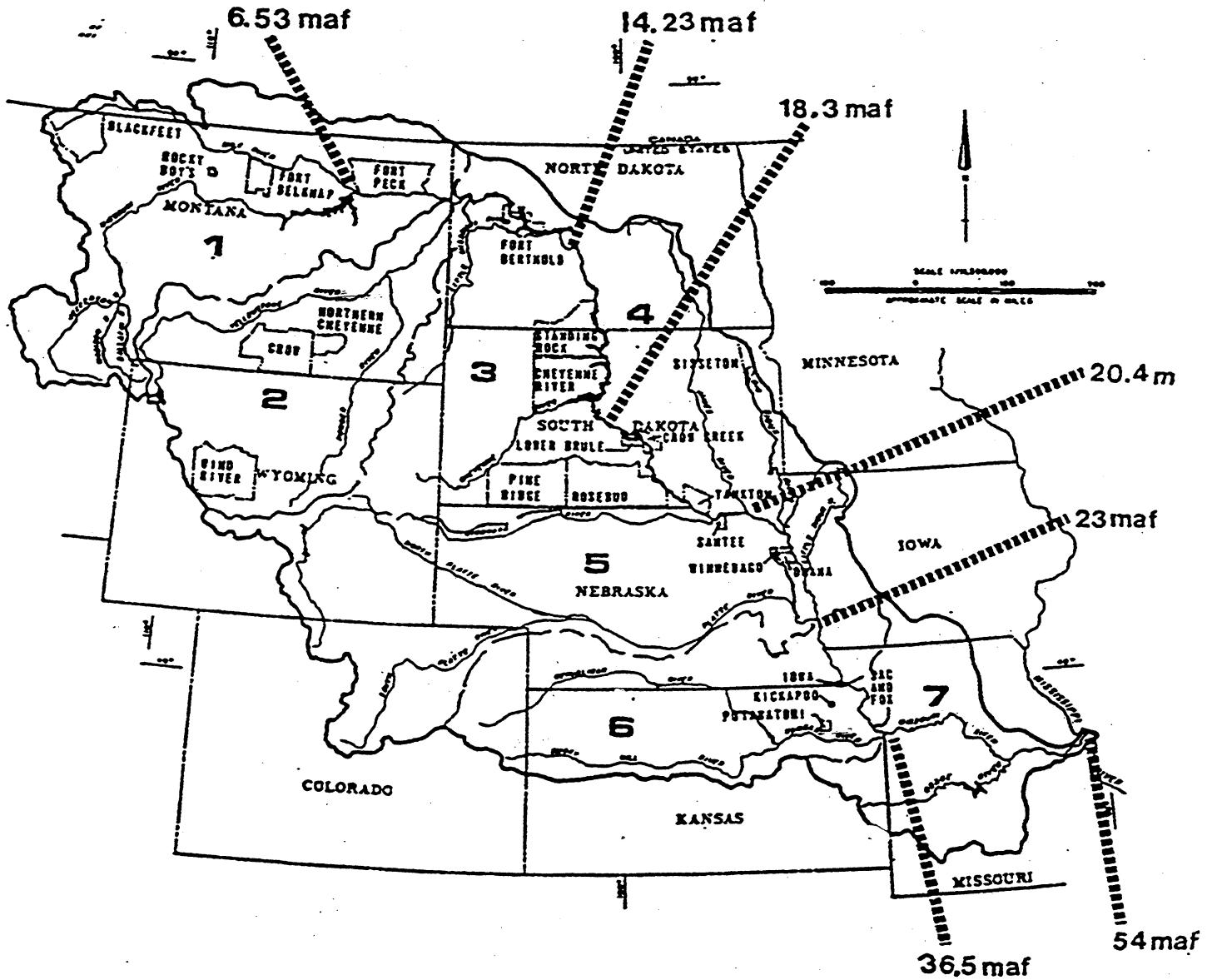
To effectively integrate Tribal water rights within the management framework for the Missouri River System, careful examination of each Reservation's water entitlements is necessary. Mni Sose Coalition believes that COE's failure to undertake this analysis jeopardizes the ability of the DEIS and Master Manual to effectively and legally plan for water management in the basin.

Although Tribal lands encompass only a small portion of the acreage of the entire Missouri River watershed, Tribal lands occupy water producing zones which generate more than 30 percent of the flow of the Missouri River. The magnitude of the Tribal impact is basin specific and is quite variable; the cumulative impact on the system is significant. The use of Tribal irrigation water will significantly impact Missouri River main stem flows and consequently, management practices.

IMPLICATIONS OF TRIBAL WATER RIGHTS FOR WATER RESOURCE PLANNING IN THE MISSOURI RIVER SYSTEM

This analysis concludes that the calculated volume of water required to meet Tribal water needs has significant potential to alter the availability of water in the Missouri River Basin. As a result of anticipated Tribal use of water, it is clear that both tributary and main stem project operations must change to accommodate a new demand regime. This underscores the need to re-evaluate hydrologic models and projections of the Missouri River Basin System in order to realistically plan for water management.

Figure 1. Map of Missouri River basin showing subbasins, key rivers, Indian reservations, and mainstem river flow at key water balance points



LEGEND

- 2** Subbasin identification
- ~ ~ ~ Subbasin boundary
- - - - - Reservation boundary
- ~~~~~ Basin boundary
- 23maf** Mainstem river flow at key water balance point
illions of acre feet

In order to account properly for the substantial volume and use of Indian water rights in the Missouri River system, the entire DEIS should be re-evaluated with a more inclusive emphasis. From a technical perspective, the following minimal steps may be required:

1. Revision of computer models on the hydrology and operation of system, including tributaries and main stem, to (a) subtract the volume of Tribal water from the system and recalculate operational procedures using a lower supply, or (b) develop operational scenarios to determine water uses sufficient to meet all expected Indian and non-Indian needs;
2. Inventory of irrigation and other water use practices throughout the basin in order to identify changes in irrigation technology or practices that could create opportunities for conservation and reuse of water resources;
3. Analysis of critical water short regions and including identification of augmentation scenarios;
4. Identification of marketing opportunities for all water resources;
5. Development of watershed management plans, institutions and practices for the MRB subbasins in order to protect and enhance water supply and quality.

Each of these research items should be examined in the DEIS, and the Mni Sose Coalition submits that the COE at this time does not have enough information to select a "preferred alternative."

CONCLUSIONS

As stated previously, we must await the issuance of the DEIS before providing you with our detailed responses. Prior to that time, however, and as explained more fully above, we have concluded that the Corps' process for the review and revision of its Master Water Control Manual is fatally flawed. The principal reason for this is the Corps' failure, at every stage of its review and revision process, to seek out each of the 28 American Indian Tribes located in the Missouri River Basin and, after intensive consultation with each Tribe, to provide for the recognition and protection of each Tribe's manifold interests in water. These Tribal water interests include the consumptive and non-consumptive use of water for a wide variety of beneficial uses, particularly including religious and cultural purposes and even such environmental purposes as the restoration of injured sources and the protection of water quality.

The Corps' default violates the important trust responsibilities imposed upon it by treaty, statute, court decision and other fundamental legal authority. It also neglects the duty of federal agencies to protect Indian Water Rights and to assist Tribes in the wise use of their water resources. Too, it is at odds with the United States' longstanding government-

to-government consultation policy regarding the American Indian sovereigns, a policy which has been most recently articulated by President Clinton in his memorandum on this point dated May 2, 1994. Lastly, the analytical approach is particularly nettlesome when its outcome is to prefer the use of water to produce larger bird colonies and fish populations over the need for water to sustain and nourish our Indian people.

The Corps' default frustrates the Tribes' ability to rapidly develop and enjoy their rights. It also creates a false sense of security in the non-Indian water community, whose current system of water usage will necessarily undergo profound change once the Tribes begin more widespread development of their senior, homeland water entitlement. The ultimate result of these combined impacts is the requirement that the Corps restudy from the beginning all of its Missouri River management analyses in order to properly evaluate and protect the Tribes' water rights, water resources and cultural heritage.

All the foregoing conclusion impel the Corps to take only one course of action: to terminate the review process now. In that manner, the Corps can take a fresh look at incorporating and protecting the Tribes' various interests in water, particularly including their cultural interests in this precious resource. Such a fresh look will enable the Corps to plan for and to achieve meaningful, substantive input by each Tribe, wherein each Tribe would delineate in detail its current and future need for water. With thoughtful consideration of this American Indian input, we have no doubt that the Corps will select a management alternative which will, at a minimum, attain the following objectives:

1. Protect and enhance each Tribe's ability to utilize water now and in the future;
2. Compensate each Tribe for the substantial past and present usage by non-Indians of Indian water otherwise available for each Tribe's enjoyment; and
3. Protect each Tribe's precious cultural and religious heritage regarding water, a pivotal interest which has been entirely ignored in the current process.

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September 1, 1994

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Colonel Michael Thuss
Army Corp of Engineers
Division Engineer
12565 West Center Road
Omaha, Nebraska 68144-3869

Dear Sir:

The Cheyenne River Sioux Tribe supports the Mni Sose Inter-tribal Water Rights Coalition, Inc. in the combined effort for withdrawal of the Master Manual until all Tribes involved have input regarding the matter.

Respectfully,

Gregg J. Bourland, Chairman
CHEYENNE RIVER SIOUX TRIBE

cc: File

Blue represents the thunder clouds above the world where live the thunderbirds who control the four winds. The rainbow is for the Cheyenne River Sioux People who are
ers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the
ctor of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian nations. The yellow
, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka—the Great Mystery. All the colors of the Lakota
The red, yellow,
and white represent the four major races. The blue is for heaven and the green for Mother Earth.



MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation

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Colonel Michael Thuss
Army Corp of Engineers
12565 West Center Road
Omaha, NE 68144-3869

Dear Colonel Thuss:

This letter to you is to express the Tribes' concern in regard to the Corp of Engineers master manual.

The Three Affiliated Tribes have been working with the Mni Sose Intertribal Water Rights Coalition to insure Indian Tribes get the opportunity to fully review the master plan and to have tribal input in the master plan.

Therefore, this is the Three Affiliated Tribes support to the Mni Sose Intertribal Coalition request to you to withdraw the master manual and place on hold until all tribes have the opportunity to have input in the manual.

Please feel free to contact my office or Mr. Donald Morgan, Natural Resources Administrator at (701) 627-3627.

Sincerely,

Wilbur D. Wilkinson
Wilbur D. Wilkinson, Chairman
Three Affiliated Tribes

xc: Richard Bad Mocassion, Executive Director
Mni Sose Intertribal Water Rights Coalition
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101.2
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A1-255

**MNI SOSE INTERTRIBAL WATER RIGHTS COALITION, INC.
RESPONSE TO THE
U.S. ARMY CORPS DRAFT ENVIRONMENTAL IMPACT STATEMENT**

SEPTEMBER 14, 1994

The Mni Sose Inter-Tribal Water Rights coalition comprises the unified voice of 22 of the Indian Nations of the Missouri River Basin. The Missouri River Basin Indian Tribes possess extensive and valuable water rights to the Missouri River and its tributaries, and further, Tribal lands contribute substantially to the amount of water in the Missouri system. Nevertheless, the United States, through the Army Corps of Engineers ("COE" or "Corps"), has developed these resources for the benefit of regional and national economies in total disregard for the Tribe's prior, legally recognized, and paramount rights to the use of the water.

This document is submitted to the Corps by the Mni Sose Coalition, and represents our sixth formal response to the Corps regarding its revision of the Missouri River Master Water Control Manual and the related preliminary and ongoing environmental impact statement analyses. Each of the Coalition's responses has outlined and detailed our longstanding, continuing objection to the process selected by the Corps to conduct the Environmental Impact Statement ("EIS"). Our objection to the Master Manual and EIS is fundamentally based on the Corps' failure to consult with Indian Tribes, its failure to protect Tribal rights as required by federal trust responsibilities, and for its selection of a preferred alternative despite continuing Tribal objections. More troubling is the continued blind approach to tribal water rights, as represented by the Corps' release in July 1994, of the Draft Environmental Impact Statement ("DEIS"), and materials related to Tribal water rights quantification.

The purpose of this document is to provide the Corps with a preliminary Tribal response to the DEIS. We choose at this time to focus on four critical and relevant issues pertinent to the current release of the DEIS:

- (1) Previous Mni Sose documentation provided to the Corps, which describes in detail how the issues, concerns, rights and governmental concerns of the Tribes have been ignored as the Corps continues to predetermine the Missouri River future;
- (2) The Corps' erroneous approach to limiting Tribal water rights in the Missouri River Basin;
- (3) The failure of the Corps to fulfill its Trust obligations to Missouri River Basin Indian Tribes;
- (4) The failure of the Corps to consult with Indian Tribes and to allow for Tribal participation in the development, discussion, and selection of alternatives.

These issues are discussed herein.

PREVIOUS MNI SOSE DOCUMENTATION TO THE CORPS HAS BEEN IGNORED

The Corps' Preliminary Draft Environmental Impact Statement ("PDEIS") for the Missouri River Master Water Control Manual ("Master Manual"), issued in August 1993, scarcely mentioned Indian Tribes, and made passing reference to Indian water rights. The Master Manual PDEIS update states that "Indian water rights may exist, but cannot be recognized until quantified through litigation or approved settlement" (PDEIS p. 3-64). The Corps most recent release of the DEIS describes Indian water rights in only slightly more detailed language: "It is recognized that Indian Tribes may be entitled to certain reserved water rights in streams running through and along reservations, [but such rights] have not been quantified in an appropriate legal forum or by compact . . ." (DEIS p. 3-64). Thus, in more than one year, the Corps has failed to make any significant progress in its appreciation of the nature and extent of Indian water rights or in its ability to examine the disastrous effect of the Master Manual policies on Tribal natural resources.

Since its inception, the Mni Sose Coalition has endeavored to respond to and provided a detailed statement of Tribal concerns with regard to the management, use and protection of the Missouri River system water and land resources. Specific documents and testimony that have been prepared, are described and highlighted below.

Standing Rock Sioux Tribe comments to Missouri River Master Manual, July 1993. This 66 page document was prepared by the Standing Rock Sioux Tribe and provided a technical critique of the Master Manual. The document analyzed the insensitive hydrologic model used to manage the system, criticized the narrow scope of the revision, reviewed the inequitable hydropower allocation from the main stem dams, reviewed biological issues, suggested a basin-wide approach to protect tribal interests, reviewed the McCarren Amendment, other legal precedent and the PIA standard developing against the Tribes' best interests, and the need for an alternative to litigation or settlement of Indian water rights to facilitate development of the Reservations.

Response to Missouri River Master Water Control Manual PDEIS, Reviewed and Updated by the U.S. Army Corps of Engineers, September 1993. This document examined the Master Manual and presented the legal, historical, and policy background for Indian water rights, as well as the trust obligations of the United States to the Tribes in the Missouri River Basin. Further, this study's analysis of the Pick-Sloan legislation highlighted the fact that the intention of the plan was also to develop Indian lands for the benefit of the Tribes. Perhaps the most fundamental point in this document is that Tribal water rights exist without quantification and have been recognized as such. In addition, Tribal water rights include consumptive and nonconsumptive uses, they have wide geographic distribution, and their use is not limited to agriculture. Finally, Tribal water rights are the Tribe's alone to manage,

and they are not subject to state water law concepts and practices. This document stressed that the process the Corps had selected was fatally flawed because of its failure to consult properly with Indian Tribes, and its failure to address the nature and scope of Tribal water rights.

ACOE Public Meeting for of the PDEIS with Tribal Leaders in Omaha, October 29-30, 1993. At this meeting, the Mni Sose Coalition asserted that the alternatives for the Pick-Sloan operations must account for the extensive Indian water rights existing in the Missouri River basin. The Tribes also presented testimony that the current operations have been devastating to the Tribes, in terms of the taking of Tribal lands, prevention of Tribal economic development wrought by the lack of benefits from the use of Tribal resources for the Pick-Sloan plan, the failure to reserve water for future Tribal development, and the failure to acknowledge and protect Tribal water rights. Colonel Schaufelberger agreed at this meeting that the Corps would account for Tribal water rights.

Mni Sose Response to the "Preferred Alternative" Plan, June 1994. This document expressed the Coalition's extreme concern and disappointment that a preferred alternative had been selected by the Corps which, again, failed to take into account any Tribal water rights. Indeed, the preferred alternative plan places higher priority on protecting wildlife than in fundamentally involving Indian Tribes in the benefits and uses of the waters of the Missouri system. The Coalition also provided fundamental technical information on estimated Tribal contributions of water and land to the Missouri River system, estimating that Tribal lands contribute as much as 40% of the water in the system. Responding to the Corps' belief that Tribal water rights use would have no impact on the operation of the Missouri River system, the Coalition reminded the Corps of the staggering volume of consumptive and non-consumptive uses required to fulfill the purposes of each reservation. This analysis called for the re-tooling of hydrologic models to account for Tribal water rights, and for the review of alternatives in that framework. Finally, this report concluded with a call to terminate the Master Manual review process until such time as the Corps can fully incorporate Tribal concerns. Compensation for each Tribe for substantial past and present usage of Indian lands and water resources was also suggested. The Coalition urged the Corps to protect each Tribe's cultural and religious heritage regarding water and land resources in the Missouri River basin by incorporating Tribal concerns.

Meeting in Omaha, Nebraska, with Corps and Mni Sose Coalition, June, 1994. This meeting served to present the major issues outlined in the document above, and provided an opportunity for new personnel within the Corps to meet Coalition members and staff. One fundamental issue raised at this meeting was the Corps' understanding of its trust obligations to Indian Tribes. Amazingly, Corps officials claimed ignorance of the trust obligation and how it affected the agency.

The Mni Sose Coalition has submitted adequate documentation to have alerted Corps officials to the serious implications for Tribal water rights of the preferred alternative for the operation and management of the Missouri River system. Notwithstanding the information presented and promises made in earlier meetings and in correspondence, none of the suggestions or concerns of the Coalition have been adequately addressed by the Corps. If one could call it progress, the Tribes were mentioned as "Historic Properties" in the most recent DEIS, and the water rights of three Tribes were cited as the only existing Tribal water rights on the system. No information was presented regarding the known disparate socioeconomic conditions between Indian Reservations and surrounding non-Indian communities and towns. Little cooperation has been initiated to genuinely include Tribal concerns either in the analysis, review or selection of a preferred alternative, or in the production of an environmental impact statement.

Socioeconomic Considerations

In its comments on the Preliminary Draft EIS released last year, the Standing Rock Sioux Tribe pointed out an adage long cited by water managers in the western states: "water in the west flows uphill - toward money." Unfortunately, in the PDEIS the Corps of Engineers is continuing this history of managing water for the benefit of the region's economic interests, at the expense of environmental and developmental equity for the Indian Nations. In addition, the reduction in the navigation season and changes in non-navigation service levels illustrate the Corps' continuing willingness to make the system modifications for endangered species.

Meanwhile, the Corps continues to violate its federal legal mandates regarding the Indian Nations. For example, as is more fully set out below, the Corps has trust obligations to protect Indian rights. In addition, a variety of federal statutes and NEPA regulations require special protection for Tribal cultural resources. Yet the treatment in the DEIS of Indian cultural resources remains scant.

Nevertheless, the socioeconomic considerations that are ignored by the Corps are far-reaching and dramatic. The Indian Tribes in the Missouri River basin remain at the bottom of every economic indicator. A 1987 study by the Christian Children's Fund, "Children of Poverty: America's Legacy of the Future," identified nearly all of the Reservations in the basin at "Extreme Risk." These are areas where "such severe combinations of factors . . . constitute a clear and present danger to the children living there." Shannon County, on the Pine Ridge Reservation, is the poorest county in the United States. Buffalo County, which comprises most of the Crow Creek Indian Reservation and where the Big Bend Dam is located, is the third poorest county in the nation. In 1988, the Bureau of Indian Affairs developed a Labor Force Report, which estimated unemployment to be 82 percent at Crow Creek, and 80 percent at Standing Rock.

Truly, the Indian Reservations that are impacted by the Master Water Control Manual DEIS remain in third world conditions. Incredibly, the Corps of Engineers ignores these conditions in the DEIS. The Corps merely identifies the existence of the Reservations in the basin, without discussing their socioeconomic conditions. This blatant omission signifies two flaws. First, it violates NEPA dictates that federal agencies assess the socioeconomic impacts of their actions. Second, by ignoring socioeconomic conditions in the PDEIS, the Corps is failing to assist the Tribes in improving socioeconomic conditions by containing Tribal water rights and development needs in the PDEIS.

The U.S. Supreme Court has determined that the arid lands containing the Missouri River basin's Indian Reservations are "practically valueless," without adequate water supplies. Winters v. United States, 207 U.S. 564 (1908). By the Corps of Engineers continuing to ignore Indian water rights in the DEIS, the Corps continues the history of water development and management that has impoverished the Tribes, and which in turn impedes economic progress on the Reservations by committing Indian water to non-Indian uses.

The DEIS should survey economic conditions on the Reservations, including unemployment rates, health needs and child and elder protection needs. The DEIS should include plans for addressing the socioeconomic conditions through increased water development opportunities, via a revised Master Water Control Manual.

The urgency of the socioeconomic conditions on the basin's Indian Reservations requires the Corps of Engineers to anticipate for the provision of water for domestic water supplies and economic development, including irrigation and stock watering. Instead, in the DEIS the Corps ignores both the problems and the potential solutions. The DEIS remains completely inadequate from the perspective of the Indian Nations.

Cultural Resources

The Corps treats native remains, artifacts and cultural objects as "historic properties." Thus, the Corps treats our sacred heritage no differently than, say, an abandoned cavalry fort. This is highly inappropriate.

NEPA's regulations require special consideration of "the proximity to historic and cultural resources." 40 CFR 1508.27. The Corps simply has failed to confer adequate consideration of the system's impacts on Native sacred areas and cultural objects.

The Corps has identified 158 historically or culturally significant sites at Fort Peck, 676 at Lake Sakakawea and 945 at Oahe. The data was not even provided for Lakes Sharpe, Francis Case and Lewis and Clarke.

In the assessment of alternatives for system operations, the Corps identified the impacts on those sites of the various alternatives. The Corps outlined percentage differences for impacts on different sites, without identifying which sites are impacted by the different alternatives. The Corps simply informs us of the odds that historic or cultural sites will be impacted by the different alternatives, and finds that all of the alternatives generally even out. This is absurd. It violates the requirement in the regulations, and in federal statutes such as the National Historic Properties Act and Native American Graves Protection and Repatriation Act that these sites be protected.

Moreover, the entire framework for these analyses is flawed. There is a substantial amount of relevant information in this area which the Corps does not possess. This results from inadequate consultation between the COE and the basin's Indians, for years. In addition, for those sites which have been identified, there is concern that the Corps does not properly identify the significance of the sites.

For example, a site was recently discovered on an Indian Reservation along the Missouri River. The site included a ring of objects, which the Corps identified as a tepee ring, with no cultural significance. The Indian representatives properly identified the site's historic use and significance. It was a sacred area, utilized for fasting and visions. The Corps of Engineers had failed to properly identify a site which holds substantial religious and cultural significance to the people on whose Reservation the site is located.

This illustrates the importance of resurveying what the COE terms "historic properties," in consultation with the Tribal leadership. The new survey should identify all sites utilized for Tribal cultural or religious activities, and their proximity to the water fluctuation zones. These sites cannot be valued in the same manner as barge traffic or recreation; so the COE should not evaluate them as part of the computer modeling for alternatives. Instead, each alternative should include a narrative description of its impact on important Tribal cultural resources. In this manner, the issue of Tribal sacred areas, burial grounds and cultural areas shall be elevated to the status which federal law truly requires in the NEPA process.

Ultimately, the Corps should work in close coordination with the Tribes to identify the culturally significant areas, and should evaluate the impact of the preferred alternatives on these sites. No alternative should be selected which desecrates the sites through flooding or erosion. The DEIS should contain a narrative description of potential impacts, and mitigative measures. Without these provisions for the protection of Indian cultural resources, the Mni Sose Coalition will continue in all probability to reject the Environmental Impact Statement.

II.

THE CORPS' ERRONEOUS APPROACH TO LIMITING TRIBAL WATER RIGHTS

The DEIS released in July, 1994 sets forth the Corps' current position on Tribal Water rights. The Corps relies on the following statement:

"The current standard for quantification of reserved water rights where reservations were intended for agricultural purposes is the measure of practicable irrigable acreage."

This statement underestimates and undervalues the magnitude and scope of Indian water in the basin, as outlined in the above-listed Mni Sose reports. For example, under the Winters Doctrine, the amount of water reserved for a Tribe is that amount of water sufficient to fulfill the purposes for which the reservations were created, with each reservation understood to be created as a homeland for its Indian peoples. Numerous treaties refer to reservations as homelands, and currently many Tribes have reserved water rights recognized for fisheries and other uses. One simply cannot envision a "homeland" of any sort which does not make multiple uses of water which echo that people's cultural heritage and which truly nourish its varied needs. This is certainly the case in the non-Indian communities and homelands whose needs are already reflected in the DEIS. The Corps wrongly assumes in its DEIS that the Missouri River basin Tribes' reservations have water rights only for agricultural purposes. The Corps, therefore, completely misses the potential magnitude and scope of Tribal water rights.

Traditional tribal uses of water and land resources were far more expansive than for agriculture alone, and the use of water to enjoy Tribal homelands today requires water to meet many other types of uses, including industrial and municipal purposes, in-place uses, mineral development and processing, water marketing, and other legitimate requirements. These Tribal demands are real demands which the Corps has failed to consider.

The DEIS goes on to cite the water rights of three of the Missouri River basin Tribes. The values given by the Corps and the correct values are shown below:

Tribes	Corps Estimate	Actual Consumption/Diversion Amount
Wind River	0.48	0.51
Northern Cheyenne	0.30	0.90
Fort Peck	1.00	1.50
	-----	-----
	1.78	2.91

The DEIS goes on to arbitrarily raise (3.2 maf) and then double (6.5 maf) the amount of water awarded to these Tribes as representative of the only water rights the Corps would consider in the Master Manual. The Corps doubles the values of water based on "practicable irrigable acreage" (although precise Corps calculation is not given or, for that matter, even available)

The Coalition strongly objects to the Corps interpretation and "determination" of Indian water rights in the Missouri River Basin as stated in the DEIS on the following grounds:

(1) Tribal water rights exist without quantification and have been recognized as such since the establishment of the Winters Doctrine. Further, the Corps needs to understand that it is the position of many Coalition Tribes that they will not and do not need to quantify their water rights under any circumstances.

(2) Indian water rights consist of both consumptive and non consumptive uses, including, but not limited to, water for instream flow, religious, cultural, agricultural, industrial, and domestic uses. Tribal water rights are geographically widely distributed and possess the most senior priority. Tribal water rights are not limited to agricultural uses, and the Corps reliance on Tribal agricultural uses is erroneous. With Tribal lands contributing as much as 40% of the water to the Missouri River system, it is conceivable that Tribal uses, based upon establishing a homeland in today's world, could exceed 60% of the flow of the Missouri River system. The Corps use of ~~3.2~~ maf and 6.5 maf falls far short of what is realistic for Tribal uses.

(3) The arbitrarily low value of 3.2 maf ignores the need to reserve water for future Tribal uses, as specified in the Winters Doctrine, in numerous landmark water rights cases such as Arizona v. California, and in actual current water rights practice.

(4) The arbitrary nature of the Corps estimate of Tribal water rights (doubling) is not standard engineering practice for any agency, municipality or government in water resources planning and management.

(5) The Corp's approach frustrates the Tribes' ability to rapidly develop and enjoy their rights and creates a false sense of security in the non-Indian water community, which will be profoundly impacted as Tribal rights come on-line.

As a result of the Corps' failure to acknowledge Tribal water rights, and to identify these water rights through adequate consultation and cooperation with Tribal governments, the Corps has failed to fulfill its trust obligations to and responsibilities for Tribal resource protection.

Hydropower Values and Benefits

The economic assumptions underlying the computer modeling remain flawed. Most significantly, the hydropower values remain understated. The Mni Sose Coalition pointed out this flaw in its comments to the PDEIS; however, this important error remains uncorrected.

The six main stem dams and reservoirs have 36 units of generators, with a combined maximum capacity of 2,409 megawatts (mw). One of the Department of Energy's marketing agencies, the Western Area Power Administration (WAPA), markets the firm power generated at the main stem dams. WAPA bases its dependable hydro supply on the drought conditions that occurred in 1961.

WAPA has determined that the main stem system can provide the supply produced in 1961 about 85 percent of the time. WAPA has estimated the dependable supply to 2,070 mw in summer and 2,010 in winter.

Peaking power is that electricity available during peak periods of demand during the 24 hour day. From the standpoint of the marketing agency, it is the most valuable hydroelectricity. The Corps understates the peaking capacity of the system. The Corps identifies the Big Bend and Oahe projects as the system's primary peaking facilities, although the Fort Randall, Garrison and Fort Peck projects likewise have peaking power capacity.

More important, though, is the fact that peaking power values themselves are understated. The Corps valued the peaking power by determining the cost of constructing a new system, one with thermal facilities. The peaking capability should be based on greater values than the cost of replacement of the existing generators with a new thermal system. As a practical matter, peaking power is more valuable than the cost of replacement thermal power. Consequently, the Corps should revise its assumptions for the value of the peaking power upwards, to reflect its actual marketed value.

In addition, the source of the benefits should be identified. The DEIS estimates the hydropower benefits at \$655 million annually. Indian water produces much or all of the hydropower benefit. The presentation of the hydropower benefits in the DEIS without accounting for the source of those benefits is a derogation of the rights of property owners, in this case, the Tribes possessing water rights. Worse yet, it constitutes patent confiscation of the right.

In sum, the Corps should revise its peaking power values, and should delineate among the benefits, the source of those benefits. To be sure, the Indian Nations possess water rights greater than 3.2 million acre feet. There must be a delineation of the contribution of Indian water to the hydropower system that is utilizing the water. This information should be provided to the U.S. Congress, for the purpose of amending the Corps' authorizing legislation. There should be an allocation of the system's hydropower benefits to the holders of the water rights for the water being used in the hydropower system. Nevertheless, in the DEIS, the contribution of Indian water rights to the hydropower system should be recognized.

III.

THE CORPS' TRUST OBLIGATIONS TO MISSOURI RIVER BASIN TRIBES

Because the Corps of Engineers completely ignores its trust obligation to the Tribes in the DEIS, for this reason, the DEIS process must be terminated now and substantially revised.

The trust obligation assumed by the United States is similar to that of an ordinary trustee to a trust beneficiary. Seminole Nation v. United States, 326 U.S. 286 (1942). It is a fiduciary obligation, requiring the United States to assist with the preservation of Tribal resources and the exercise of self determination.

"Since the trust obligations are binding on the United States, these standards of conduct would seem to govern all executive departments that may deal with Indians," including the Corps of Engineers. F. Cohen, Handbook of Federal Indian Law, 225 (1982 ed.). In fact, the Master Water Control Manual DEIS is precisely the type of situation where the fiduciary principles strictly apply:

Application of a duty of loyalty to administrative officials in their dealings with Indians is of particular importance because conflicts of interest between Indian claims to natural resources and the programs and policies of agencies not directly responsible for Indian affairs frequently impede the faithful discharge of trust obligations to Indians by federal officials. Indian Tribes have claims... to water which [are] coveted for non-Indian water, power and flood control projects by the Corps Of Engineers.... Non-Indians are more numerous and usually politically more powerful, so substantial political pressure can frequently be applied on executive officials to compromise or ignore Indian rights.

F. Cohen, at 227-228 (emphasis added).

Mni Sose maintains that this is precisely what is occurring with the Master Manual DEIS. The DEIS clearly responds to the economics of hydropower, upstream recreation, and to environmental values. It ignores Indian water rights, Tribal sovereignty and culturally significant areas. The DEIS must be completely rewritten to incorporate these Tribal values as foremost considerations. Instead, as currently developed, the DEIS ignores Tribal rights, in violation of the federal trust obligation to the Tribes.

As detailed above, the Corps has failed to adequately consider the impact of the Master Manual on the existing and future abilities of the 28 Tribes in the basin to exercise sovereignty over their homelands. For more than one year, the Tribes have been advising the Corps as to the need to be inclusive and to develop a comprehensive plan that truly addresses all of the stakeholders in the basin. The Corps has simply ignored this vital concern.

The Corp's default violates the important trust responsibilities imposed upon it by treaty, statute, court decision and other fundamental legal authority. It also neglects the duty of the federal agencies to protect Indian Water Rights and to assist Tribes in the wise use of their water resources. Too, it is at odds with the United States' longstanding government to government consultation policy regarding the American Indian sovereigns.

The most recent articulation of the trust obligations of agencies of the United States to Indian Tribes was presented by President Clinton in May, 1994. In a document entitled, "Government to Government Relations With Native American Tribal Governments, A Memorandum for the Heads of Executive Departments and Agencies", President Clinton stated guidelines intended to improve the internal management of the executive branch with regard to its fulfillment of trust obligations to Native American governments:

"In order to ensure the rights of sovereign Tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government to government relationship with federally recognized Tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with Tribal governments prior to taking actions that affect federally recognized Tribal governments. As such consultations are to be open and candid, so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs and activities on tribal trust resources and assure that Tribal government rights and concerns are considered during the development of such plans, projects, programs and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with Tribal governments on activities that affect the trust property and/or governmental rights of the Tribes...."

The practical implications of this statement for the Corps' activities in producing the Master Manual are clear. First, the Corps must provide for a full assessment of the impact of this plan on Tribal trust resources, economies and governments. Second, the Corps must develop a mechanism to insure that meaningful Tribal consultation is achieved. Third, the Corps must identify additional alternatives that effectively account for Tribal water resources, water rights and water uses. Finally, the Corps must undertake an examination of the compensation due Tribes for the past and current use of land and water resources in the production of NED benefits to the United States.

The Corps' failure to act in a fashion characteristic of its status as trustee frustrates the Tribes' ability to rapidly develop and enjoy their rights. It also creates a false sense of security in the non-Indian water community, whose current system of water usage will necessarily undergo profound change when the Tribes begin more widespread development of their senior, homeland water entitlements.

IV.

CONSULTATION WITH INDIAN TRIBES

The National Environmental Policy Act requires consultation with affected parties, yet the Corps continues to respond to the Tribes with "sleight of hand."

Conversely, the Corps works in close coordination with the state governments. It provides a copy of the voluminous EIS documents to each governor. It meets Individually with representatives of each state to discuss their concerns with the documents and NEPA process.

The status of Indian Nations in our federal system of government is a status "higher than a state." V. Deloria, The Nations Within (19__). Yet the Corps ignores the sovereignty of the Tribes, and improperly provides a much lower level of consultation than it does with the states. The Tribes do not receive the EIS documents. They do not enjoy private meetings on the EIS documents and NEPA process. In fact, until recently there was no consultation whatsoever. Although the COE has appointed an Indian Liaison, David Vader, Mr. Vader has informed the Tribes that he has not been delegated authority to work with Tribal governments on the Master Manual. This illustrates just how low a priority the COE has made consultation with the Tribes on the Master Manual. **The Corps does not allow its Indian Liaison to discuss the DEIS with the Tribes.**

This is ridiculous, and must be corrected immediately. David Vader should be authorized to undertake full consultation with the Tribes on the DEIS. Mr. Vader and the Omaha Division should meet individually with each Tribal Chief Executive Officer, supply a copy of the DEIS and explain its import. In turn, they should solicit information on the Tribe's water development infrastructure needs, and cultural resources in the Missouri River basin. In addition, there should be public meetings on the Reservations on the DEIS.

Very little, or none of this has occurred with the Tribes. Yet the Corps provides this high level of consultation with the state governments. Moreover, the Corps has committed itself to high level consultation with the Tribes. On September 30, 1993, at the Missouri River Master Manual PDEIS conference in Omaha, Colonel Schaufelberger agreed with the Tribes that both substantively and procedurally, the COE failed to adequately include Tribal rights in the PDEIS. He committed to making the changes needed in the DEIS. Yet no changes have been made. The Corps did not honor Colonel Schaufelberger's word. Consequently, no final actions should be taken, and the entire process must be revisited.

CONCLUSION

The COE cannot proceed with a final EIS. It must undertake high level consultation with the Indian Nations of the Missouri River basin. The Corps should work with the Tribes on water development and cultural resource planning. In this manner, the Corps may incorporate Tribal water rights and cultural resources into a revised DEIS. By undertaking this process, the Corps shall be consulting with the Tribes in a manner consistent with the status of the Tribes as sovereign nations, within our nation. By consulting with the Tribes, the Corps will learn about the socioeconomic conditions on the Reservations; this information should be contained in the DEIS. By assessing these conditions, and comparing them to the contributions of Indian land and water to the national economy, the Corps may include in the revised DEIS recommendations for revisions in the Flood Control Act and related federal statutes to ensure that the Indian Nations in the Missouri River basin share in the economic benefits for which we contribute so much.

Standing Rock Sioux Tribe (T0002-01)

October 17, 1994

T0002

Herewith submitted on behalf of the Standing Rock Sioux Tribe:

STANDING ROCK SIOUX TRIBE'S

RESPONSE TO THE

ARMY CORPS OF ENGINEERS'

DRAFT ENVIRONMENTAL IMPACT STATEMENT

SEPTEMBER 1994

EXECUTIVE SUMMARY

1. The Standing Rock Sioux Tribe, signatory to the 1851 and 1868 Treaties of Fort Laramie and located in North Dakota and in South Dakota respectively, is heavily impacted by the Draft Environmental Impact Statement of the Missouri River Master Water Control Manual with its total lack of concern for the Indian water rights in the Missouri River basin.
2. The trust responsibilities and obligations of the Army Corps of Engineers to the Standing Rock Sioux Tribe have not been identified nor addressed in the DEIS as to its effect on Indian water rights under the Winters' Doctrine.
3. The history of Federal Policy towards Indian water rights in the Missouri River basin must be transformed for the preservation and survival of the Indian Nations.
4. The hydropower benefits of the Missouri River Basin have substantially repaid the Federal Treasury, and the Missouri and Mississippi navigation industry prospers along with other downstream users, while the upstream Indian Nations remain among the poorest people in the Nation. It is Indian and rural people who pay the highest electrical rates in the country.
5. The Standing Rock Sioux Indian Reservation on Oake Lake is subject to drastic water level fluctuations and inundation affecting access, municipal and irrigation water intakes, and livestock accessibility.

The Native remains, artifacts, and cultural objects located within the boundaries of the Reservation are treated as "historic properties" by the Army Corps of Engineers with complete disregard for the Tribe.

Standing Rock Sioux Tribe (T0002-02)

7. The Corps perpetuates the dilemma by refusing to acknowledge Indian water rights, and non-Indians continue to develop unused Indian water. Therefore, congressional oversight of the Master Manual Review is necessary. Applicable Indian water policy and institutional management structures are necessary to protect Indian water rights and to keep the Indian people from being planned out of existence.
8. Water development opportunities are not available for the Tribe to fulfill its purposes.
9. The Corps' DEIS for the Master Manual of the Missouri River and the Energy Planning and Management Program of the Western Area Power Administration must be combined when addressing the Indian Nations due to its treaties and water rights from time immemorial.
10. Finally, the Corps has no inkling of the cultural and spiritual value the Indian nations have on its water; but, only places a monetary value on it.

Respectfully submitted:

W. J. ...
Jesse Taken Alive, Chairman
Standing Rock Sioux Tribe

NOTE: This Executive Summary is being submitted to meet the testimonial needs before the Army Corps of Engineers this date. A full testimony will follow.

Division Engineer
U.S. Army Corps of Engineers
12565 West Center Road
Omaha, NE 68144-3869

RE: Comments on Draft Environmental Impact Study on the Master Water Control Manual for the Missouri River

To whom it may concern,

This letter is in response to the Corp of Engineers Draft Environmental Impact Study on the Master Water Control Manual for the Missouri River. As a representative of the Yankton Sioux Tribe and a lifelong resident of the Ft. Randall area I have a vested interest in changes to the Missouri River. With this interest in mind I feel that the Corp of Engineers should be congratulated for attempting to correct problems caused by the Master Manual. The changes that are in the Preferred Alternative, however, are not substantial enough to give increased benefits to the area of my concern(Ft. Randall Dam). The Preferred Alternative fails in two areas. The first is that the Permanent Pool is not set at a high enough level. The Preferred Alternative also doesn't recognize Tribal water rights to the extent I feel it should.

The present figure in the Preferred Alternative for the Permanent Pool is too low and shows a lack of consideration for the needs of the Upper Basin states in comparison to the Lower Basin states. This low lake level negatively influences the recreation, tourism, and sportfishing industries of not only the

Ft. Randall area but all the Upper Basin states.

Here at Ft. Randall there are problems caused by the flow that are not going to be corrected in the Preferred Alternative. The water level is so low at times below the dam, that the boat docks can't be used because they are out of the water. There are also drops in water level below the dam of a foot or more at nightfall that signal the end of fishing because the fish stop biting. These problems lead not only to recreational losses but also economic losses, because when people are not using the recreation areas local businesses are losing customers.

On behalf of the Yankton Sioux Tribe, I find the Preferred Alternative to be sorely lacking in recognition of Tribal water uses and rights. The section dealing with the Yankton Sioux Tribe in Volume 9, page 3-21, section 3.8.4.3 is full of error. The manual states that the Yankton Sioux doesn't use the Missouri River for irrigation. The fact of the matter is that the Yankton Sioux Tribe does use the river for irrigation and has done so since the 1960's. This information and other information on the Yankton Sioux Tribe's water use is contained in yearly reports sent to the Corp of Engineers by the Wagner, SD, Bureau of Indian Affairs office which represents the Yankton Sioux Tribe.

The Yankton Sioux Tribe's water needs are growing every year as more people are moving back to the reservation. The Yankton Sioux Tribe's population and that of Indian tribes across the country is increasing at a rate of twice that of the rest of the country. This population growth leads to an increase in residential areas and commercial growth, which leads to increased

water use. The Yankton Sioux Tribe operates farming operations which have the potential to grow in the future. The Yankton Sioux Tribe foresees the irrigation of at least 4,000 acres of land, if not at present then in the future. But this is not the total of our water needs. We feel that it would limit our ability to grow as a tribe to place a figure on our water needs at this time.

In summary I feel that the Preferred Alternative does not contain substantial enough changes to make it the most beneficial alternative, therefore it should be revised. There has to be changes made to increase the Permanent Pool level. The Upper Basin recreation, tourism, and sportfishing industries can not be overshadowed by Lower Basin shipping industries. The revisions made to the Preferred Alternative needs to have input from all the tribes affected and should take into consideration future tribal water needs. The Preferred Alternative must take into account documents such as the Winters Doctrine, when dealing with issues concerning tribal water rights. I feel that if the Corp of Engineers takes all of the above issues into consideration there can be found a Preferred Alternative which will satisfy all the tribes and states affected.

Sincerely,



Jim Stone
Environmental Protection Director
Yankton Sioux Tribe

OMAHA TRIBE OF NEBRASKA

T0003

P. O. Box 368
Macy, Nebraska 68039



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EXECUTIVE OFFICERS

Dr. Rudi L. Mitchell, Chairman
Mitchell Parker, Vice-Chairman
L. Arnie Harlan, Treasurer
Nate J. Parker, Sr., Secretary

TRIBAL ADMINISTRATION

MEMBERS

Doran L. Morris, Sr.
Clyde Tyndall
Clifford R. Wolfe, Jr.

September 28, 1994

RM 3056/1994

Colonel Michael Thuss
Army Corp of Engineers
Division Engineer
12565 West Center Road
Omaha, Nebraska 68144-3869

Dear Colonel Thuss:

Today the Omaha Tribal Council of the Omaha Tribe of Nebraska voted to support the Mni Sose Intertribal Water Rights Coalition, Inc. in the combined effort for withdrawal of the Master Manual until all Tribes involved have input regarding the matter.

Respectfully,

Dr. Rudi L. Mitchell

Dr. Rudi L. Mitchell
Tribal Chairman
Omaha Tribe of Nebraska

RM:ct

A1-275

**PUBLIC HEARING
PROPOSED CHANGES IN MASTER WATER CONTROL MANUAL
MISSOURI RIVER
WEST MONONA HIGH SCHOOL, ONAWA
OCTOBER 25, 1994, 7 P.M.**

**DALE M. COCHRAN
SECRETARY OF AGRICULTURE**

I want to thank the Corps of Engineers for scheduling this hearing on the future of the Missouri River.

I rise this evening to speak in opposition to the proposed revisions in the Missouri River Master Water Control Manual. *I am here tonight to represent the people of Iowa and particularly our farmers.*
As Iowa's Secretary of Agriculture, I cannot endorse a plan

that would hurt our basic industry, agriculture, in five key areas.

The plan before us would:

- 1. Increase the frequency of flooding along the Missouri River and make tens of thousands more acres prone to flooding;**
- 2. Increase soil erosion, and potential surface water pollution;**
- 3. Curtail our ability to obtain agricultural inputs -- seed,**

fertilizer, and chemicals at more favorable transportation costs;

4. Restrict our avenues to market our commodities, thereby decreasing our market prices which are already at rock bottom;

5. Adversely affect the proper drainage of farmland.

There are 31 facilities along east and west banks of the Missouri River where agricultural commodities and other products from Iowa and Nebraska are shipped out and where commercial products and agricultural inputs are brought into our state. This includes 11 facilities in Iowa and 20 just across the river in Nebraska.

Estimates gathered for the Corps' own report shows that from 1984 through 1988, 1.17 million tons of cargo moved downriver annually from Sioux City to the river mouth, farm products accounted for 64 percent, or over 715,000 tons of that

cargo. Another 1.3 million tons of cargo flows up river from the mouth to Sioux City each year. The largest tonnage is shipped just prior to and after the harvest from August through November.

One week ago, I met in Council Bluffs with Larry Kay, past president of the Iowa Corn Growers Association. He told me that grain elevators in southwest Iowa are, for the first time, getting into the export business. He says shipping on the Missouri River has made this possible. Gayl Hopkins of Salix told me in Sioux City that he is shipping corn to Mexico. The river transportation is less costly for him.

The possibility of shipping on the Missouri River has fostered moderation in rail transportation rates for shippers in western Iowa. Eliminating the Missouri as a transportation alternative during harvest season would almost certainly lead to

increases in rail transportation rates.

The proposal now under consideration would reduce the river flow in late summer so much that the navigation season would be shortened by at least a month. That means that the average of 91,000 tons of agricultural products shipped on the river during the month of November would be forced onto an already overloaded rail transportation system.

In addition to serious economic damage, the proposal, if placed into effect, would inflict serious environmental damage to the lower Missouri basin. It has been estimated that ~~more than~~ *far in excess of 100,000 acres, of this amount* 40,000 acres of agricultural land would be subjected to spring flooding here in Monona County. Another 55,000 acres in Fremont County would be similarly affected.

Tens of thousands more acres in Woodbury, Harrison and

Mills Counties would also be subjected to spring flooding. This potentially could drive thousands of family farmers out of business and dry up the economies of many western Iowa communities that depend upon those farm families.

Land along the Nishnabotna River and other Missouri tributaries, as well as drainage channels, would suffer the same fate as they are unable to discharge their flow into the Missouri.

The land would not be drained in the spring as the backed up water would block farm drainage till out

The flood waters unleashed upon our state would scour the topsoil from our farmland. Each successive flood would rip a bigger swath as sediment builds up in the river bottom.

Eventually, the shallowing river may never be able to accommodate barge traffic, without extensive and expensive dredging.

~~The resulting increase in soil erosion also increases the~~

The lowering of the river in the fall could affect the ability of our wells to function properly and also affect our water quality.

~~Proposed for publication in the Missouri River Review~~

~~1966 R.~~

The plan before you clearly is not in the economic interest, nor in the environmental interests of the lower basin states. I strongly urge the Corps to conduct additional studies to devise a plan that takes all interests into consideration.

I urge you to seek a solution that would address the needs of all Missouri basin states. Let's not pit one region against another, or one economic activity against others.



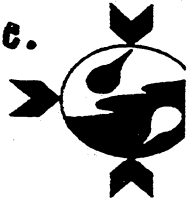
MNI-SOSE Intertribal Water Rights Coalition, Inc.

Phone (605) 343-6054 - Fax (605) 343-4722

PO Box 226, 514 Mt. Rushmore Rd.

Rapid City, South Dakota 57709-0226

T0007



November 30, 1994

JTB

BT

Colonel Thuss
Division Commander
Missouri River Division
12565 West Center Road
Omaha, NE 68144-3869

Dear Colonel Thuss:

Please find enclosed comments submitted on behalf of the Mni Sose coalition on the Draft Biological Opinion on the Missouri River Master Water Control Manual Review and Update as part of the Draft Environmental Impact Statement (DEIS) package. It is our hope that the comments are carefully considered and incorporated into the Corp Master Manual. Please contact me if you should have any questions or need clarification about any of these comments.

Thank you for your consideration of these comments.

Sincerely,

Richard Bad Moccasin
Richard Bad Moccasin *uk*
Executive Director

Mni Sose Intertribal Water Rights Coalition, Inc.
Comments on the Draft Biological Opinion
of the U. S. Fish and Wildlife Service
on the Missouri River Master Water Control Manual PDEIS

I. Background

A. Indian Nations of the Missouri River Basin

The Missouri River basin is historically Indian Country. There are 27 Indian Nations located in the basin, with eight of these Reservations located right on the Missouri River's main stem. Most Reservations are within watersheds of tributaries of the Missouri. All of the Tribes possess valuable water rights to the Missouri River or its tributaries. In addition, the Tribes possess extensive hunting and fishing rights, subject to regulation only by the Tribal governments themselves.

The Mni Sose Intertribal Water Rights Coalition (hereinafter Coalition) represents 22 of the basin's 27 Indian Nations. The operation by the Corps of Engineers (hereinafter COE) of the Missouri River main stem dams via the Master Water Control Manual is one of the priority concerns of the Coalition. Consequently, the Coalition remains very interested in the current COE review and study, and the draft biological opinion of the U. S. Fish and Wildlife Service (hereinafter USFWS).

B. Subsistence Hunting and Fishing

Historically, the Tribal communities of the Missouri basin arose along the Missouri's main stem and its tributaries. The riparian resources provided food, wood for heating and shelter, water for drinking and gardens, and forage for wildlife. In fact, subsistence hunting and fishing was the predominant economic activity among the Tribal communities up until the Flood Control Act of 1944 decimated the Tribe's traditional economies and livelihoods.

Consequently, the Coalition is seriously concerned with Pick-Sloan's impacts on wildlife resources and habitat. Historically, the native warm water fishery, including catfish, sturgeon, northern pike, carp and paddlefish were the fish resources harvested for subsistence by Tribal peoples. In recent years, the game fish that have become the region's sports fishing staple, namely the walleye and large mouth bass, have grown in importance to the basin's Indians. In addition, the fur-bearing animals feeding in cattail marshes and the big game associated with the cottonwood/dogwood habitat are of utmost importance to the Tribal economies. Most important remains the nesting habitat for bald eagles, which retain significant religious significance to our people.

The impact of COE operations on these wildlife resources, and their habitat, are the focus of these comments

II. Endangered Species Act (ESA) Section 7 Analysis

A. Ecosystem Approach to Protection of Endangered Species

The Biological Opinion properly asserts that the Corps should undertake an ecosystem approach in determining the impacts of current and alternative operations on endangered species. However, the opinion does not go far enough. It provides inadequate guidance to the Corps on the type of ecosystem analysis that should be undertaken, in this context.

For example, the opinion should analyze the impacts on the various types of habitats associated with the main stem of the Missouri River. There are at least five natural habitat types with characteristic flora and fauna, along the upper main stem corridor (Clapp, 1977). These habitats are as follows:

1. Sand dune habitat - important to big game and terrestrial birds.
2. Cattail marshes - important for aquatic furbearers and migratory waterfowl, with extremely high habitat value.
3. Cottonwood/Willow habitat - important for big game and upland birds.
4. Cottonwood/Dogwood habitat - important for big game and upland birds.
5. Mature habitat - important for big game and upland birds.

Guidance should be provided to the Corps assessing the impacts on each habitat, off the preferred alternative contained in the DEIS. Otherwise, any effort toward an ecosystem approach to protect endangered species becomes meaningless.

B. Wildlife and Habitat Values

The values attributed to fish and wildlife and their habitat are understated in the DEIS. The USFWS should further assess the COE value functions. The entire computer modeling through which the preferred alternative has been chosen may be flawed in this regard.

C. Bald Eagle

The bald eagle is an integral aspect of the religions of many Indian Nations. Eagle feathers are symbols of Tribal warrior society - much as the medal is a symbol of non-Indian military

achievement. In addition, eagle feathers are integral in Tribal religious ceremonies.

The bald eagle has been listed as endangered since 1978 in 43 states. They are abundant in Alaska and Canada. However, there are only about 2,500 breeding pairs in the lower 48 states. They were common along the Missouri River and its tributaries. Bald eagle populations declined in the early 20th century due to loss of habitat, shooting and trapping. Since the 1950's the use of pesticides became a major problem. Most of the forest habitat along the Missouri River was destroyed by the main-stem dams. What little forest habitat remains is threatened by clearing to build riverside developments (Northern States Bald Eagle Recovery Plan, USFWS, 1983).

The DEIS stated that 10 bald eagles wintered on Lake Oahe in 1988. A check of the Resource Management Inventory, SD Game, Fish and Parks, 1997, and the ACOE Natural Resources Management Handbook, 1989, resulted in the following ACOE Lake Oahe management units being identified as bald eagle wintering areas, resting areas or roost sites: 1, 6, 14, 19, 21, 23, 27, 79, 80, 96, 102, 103, 115, 116, 118, 119, 121, 123, 124, 131, 132, 133, 132, 136, 138, 139, 140, 141, 144, 146, 147, 148, 151, 152, 155, 156, 157 and 158. These 38 units, including Units 152, 155, 156 and 158, which are identified by the USFWS as important winter habitat, comprise many acres of Lake Oahe shoreline. It is inconceivable that only 10 bald eagles are wintering along Lake Oahe.

D. Pallid Sturgeon

The Pallid Sturgeon is an ancient fish of the Missouri River. It was listed as endangered in 1990. They were not identified as a separate species until 1905, resulting in sparse historical data. They appeared to be somewhat common as late as the 1950's and 1960's. Observation data from the Missouri River and its tributaries in the Dakotas and Montana reflect their population trend:

<u>Per Year</u> ^{1*}	<u>Time Period</u>	<u>Average Observations</u>
	1960's	50
	1970's	21
	1980's	6

The present status of the pallid sturgeon is that only small portions of their former range contain individuals. No reproduction has been reported in South Dakota in more than a decade, adults were located below the Oahe and Fort Randall Dams in

¹ From USFWS documents.

1992.

The reasons for the decline is that all of the 3,550 river miles that the pallid sturgeon inhabits have been significantly affected by man. Approximately 28 percent of the affected area has been impounded, which has created unsuitable lake-like habitat, 51 percent of the area has been channelized, and the remaining 21 percent of the historic habitat is below dams. In the latter 21 percent, the water released from dams has reduced silt loads and caused runoff patterns and colder temperatures, all of which are believed to be detrimental to pallid sturgeon (Pallid Sturgeon Recovery Plan, USFWS, 1993).

E. Water Quality

While the COE mentions the problems of low dissolved oxygen and chemicals within the river (although the water quality is rated as Class II - generally good) no studies have been performed to evaluate possible solutions to these problems. Low dissolved oxygen (<5 mg/l) within riverain and reservoir environment results in reduced growth rates of fishes, reduced fish assemblages, or even fish kills as well as damage to other aquatic organisms. Installation of turbine venting, oxygen injection, etc. may be necessary to remedy the problem. These problems and associated possible solutions should be addressed in the PDEIS. The lack of multiple level outlets in a dam should not preclude an investigation of ways to correct this problem.

In addition, to have suitable water quality in the tailwaters, instream flow recommendations, based on a habitat specific model, should be developed for all of the tailwaters.

IV. Water Resources Considerations

The USFWS does not adequately identify water resource considerations arising in the DEIS and preferred alternative. There should be comprehensive discussion of the affect of future water deletions and tributary flows on fish and wildlife and their habitat.

A. Future Water Depletions

The preferred alternative is derived from a computer model which includes faulty assumptions about future water depletions. Specifically, there is no accounting for the future depletion of water for consumptive use on Indian Reservations. These depletions are potentially very significant - totalling tens of millions of acre feet of water. Consequently, the DEIS may well provide inaccurate estimates of future water levels. This affects nesting habitat for bald eagles, and the least tern and piping plover.

Ultimately, the failure by the COE to account for future water

depletions through the exercise by the Tribes of our water rights remains our primary concern with the DEIS, and computer modeling through which the Corps derived the preferred alternative.

B. Tributaries

The tributaries' native habitat is rich in cottonwood/willow and cottonwood/dogwoods. Indian people continuously harvest big game for subsistence purposes within these areas and the bald eagle, of particular significance as described above, is dependent upon these areas for nesting and habitat purposes. In addition, Tribal communities arose historically within the tributary watersheds.

Yet the DEIS contains no discussion of tributary flows. Tributary flows are significant to the main stem habitat in several respects. Tributary inflows affect the water levels of the main stem of the Missouri. Thus, they impact nesting habitat of the tern and plover and erosion rates and native habitat used for nesting by bald eagles. The health of the tributary habitat - in large part determined by the tributary flows themselves - affects nesting patterns by bald eagles and migration routes of waterfowl.

The Service properly recognizes that "...tributary reservoir operations are interrelated. Recognizing this mutual relationship, system regulation, under the framework of the Master Manual criteria and annual operations, is coordinated with tributary operations (and vice versa) (USFWS, Draft Biological Opinion, pp.25-26). However, "tributary reservoir operations" are completely ignored in the DEIS. The Service accurately describes what should happen in the planning phase of resource management in the basin, but not what has happened in the development of the DEIS.

The Bureau of Reclamation takes into account flood control needs and main stem water levels in operating the tributary projects. But the COE has not taken into account tributary flows in its planning for main stem operations. Yet tributary flows affect main stem water levels and nesting habitat. Thus, the DEIS is truly fatally flawed.

The COE should not proceed with the preferred alternative because it has completely ignored the impact of tributary flows and Indian water rights. As those omissions have potentially serious consequences for nesting habitat, the Service is obligated to analyze these issues in its opinion.

V. Other Considerations

A. Consultation

The Mni Sose Coalition is extremely concerned with the lack of

consultation and coordination of the Fish & Wildlife Service with the Indian Nations. The Biological Opinion has been developed without any meaningful consultation with the Tribes. The Service ignores the role of the Tribal governments as sovereign governments, resource owners and concerned environmentalists. Instead, the Service works exclusively with state governments and private interest groups.

There is much which the Service may learn from the Indian people. Indeed, the Draft Biological Opinion is inadequate without our input and prior consultation.

B. Bridge Projects

The Federal Highway Administration is currently working with the Standing Rock Sioux Tribe and State of North Dakota, for the development of a bridge across the main stem of the Missouri River at Fort Yates, ND. This bridge will be located in large part on the Standing Rock Indian Reservation. In its survey of new bridge projects, the Service does not include the Fort Yates bridge.

VI. Conclusion

The Indian people hunted and fished in the Missouri River Basin long before the immigration of the whites. We enjoyed a harmonious relationship with wildlife since time memorial. Accordingly, we are seriously concerned with the impacts on wildlife and wildlife habitat of the Pick-Sloan development and operations. The Fish and Wildlife Service proposes an ecosystem-wide approach, which we support. However, the Service is not adequately critical of the Corps' almost complete failure to take such an approach. Bald eagle survey are inadequate and pallid sturgeon spawning grounds are not properly identified. Wildlife and habitat values are seriously understated.

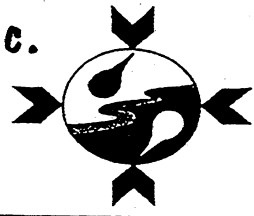
These are significant flaws in the Corps' water resources planning. Future depletions are improperly assessed. The PDEIS contains no accounting for tributary flows. There is no holistic water resources and wildlife management scheme.

Moreover, there has been wholly inadequate consultation with the Tribes. The water and wildlife resources on which we survive are threatened and Tribal sovereignty has been ignored and insulted. The Corps of Engineers and Fish and Wildlife Service can, and must, do better.



MNI-SOSE Intertribal Water Rights Coalition, Inc.

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December 22, 1994

Dr. Morgan Rees
U.S. Department of the Army
Office of the Assistant Secretary - Civil Works
108 Army Pentagon
Washington, DC 20310-0108

RE: Corps of Engineers Missouri River Master Water Control Manual DEIS

Dear Dr. Rees:

Thank you very much for meeting with Mni Sose consultant Peter Taylor, technical team attorney Peter Capossela, and me on December 14. We discussed the concerns of the Mni Sose Coalition with the Corps of Engineers's Missouri River Master Water Control Manual Draft Environmental Impact Statement (DEIS).

As we discussed, Mni Sose and the member Tribes have informed the COE Omaha Division of at least three fundamental concerns with the DEIS and preferred alternative contained therein. First, the Coalition is concerned with the treatment of Indian water rights in the DEIS' description of estimated future water depletions. The DEIS fails to accurately portray the status of the reserved water rights of the Tribes. It merely states that three Tribes have quantified water rights pursuant to compacts with states of judicial decrees. This ignores the substantial water rights of the basin's other 24 Tribes, which exist irrespective of a quantification. The DEIS should identify that there are substantial Indian water rights which may consist of most or all of the water currently stored by the COE and designated as multiple use pools.

As Mr. Capossela stated, an accurate assessment of the legal status of the Tribes' rights is essential, given the very misleading data utilized by the COE for the devising of the existing water control manual. The COE utilized figures that Indian consumptive use shall total less than 350,000 acre-feet of Indian water among 28 Tribes. In 1989, the Wind River Tribes alone received a judicial degree for much more water than that. Thus, the COE truly ignores reality when it ignores Indian water rights.

Second, the Tribes of the Mni Sose Coalition have expressed strong concerns with the scant treatment in the DEIS of impacts of the preferred alternative on Indian culture resources. As we discussed, there are a substantial number of Indian cemeteries, burial grounds, and other culturally significant sites along the river. The DEIS contains negligible discussion of these sites. There is no assessment of how the preferred alternative affects these sites through erosion or inundation.

Letter to Dr. Morgan Rees

Page Two

December 22, 1994

The protection of these issues is critical to the Tribes and we are hopeful that the COE shall take the protection of these sites into account before finalizing the EIS and preferred alternative.

Third, the survey of the socioeconomic conditions in the affected environment ignores the situation in Indian Country. The construction and the operation of the main stem Missouri River projects have an overwhelming impact on Indian Country. The Big Bend project is located right on my Tribe's Reservation, Crow Creek. It resulted in the relocation of one third of the families on the Reservation, many of them having had to be relocated on two occasions. This situation is common to the Tribes along the Missouri River.

Consequently, it is appropriate that the DEIS contain a meaningful description of the socioeconomic conditions of the Reservations. The applicable regulations require this. Instead, the DEIS focuses on the socioeconomics of the region as a whole, practically ignoring the Reservations. This should be changed, especially in light of the fact that the dire economic conditions in Indian Country may, in large part, be attributed to the construction of the main stem dams.

You requested that Mni Sose develop language on Indian water rights and propose it to the Corps for inclusion in the final EIS. I have directed Mni Sose's technical advisors to do so.

In the meantime, I am formally requesting that the timeline for action on the DEIS be postponed for a reasonable time period to enable the Omaha Division to respond to these concerns we raised on December 14. Surely, a reasonable postponement of the timelines shall not unduly prejudice this process. If this does not occur, the Tribes are concerned that our efforts to protect our sacred burial grounds and ceremonial sites along the Missouri River shall be fruitless. This remains too important an issue for the Corps of Engineers to ignore. Similarly, our efforts to ensure that our treaty rights are adequately addressed is of too much importance to receive the scant treatment provided by the Corps of Engineers up to this point.

Thank you very much for your attention to these issues. I appreciate the role in which the Assistant Secretary's office has played on the Tribal issues in recent years. On behalf of the Mni Sose Coalition, let me state that I look forward to continue working with you on these issues of tremendous importance to the Indian people of the Missouri River basin.

Very truly yours,

Richard Bad Moccasin

Richard Bad Moccasin *RB*
Executive Director

*Missouri River Master Water Control Manual
Review and Update FEIS*

Tribal Correspondence 1995



FORT PECK TRIBES

T0005

Assiniboine & Sioux

Division Engineer
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February 22, 1995

Comments on the Draft Environmental Impact Study on the Master Water Control Manual for the Missouri River

These comments are being submitted by the Fort Peck Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

The DEIS does not adequately address the environmental impacts to the tributaries on the Reservation.

Down cutting on the tributaries which flow into the Missouri are evident along the bottom one third of the reservation. The DEIS does not adequately address the impacts of the management of the Missouri on the tributaries which flow into it. Loss of riparian habitat for fish and wildlife, wood for fuel and livestock cover, cropland, and hunting areas have not been calculated as part of the model. Additionally, the water quality is degraded when sediments erode into the channel resulting in a loss of beneficial uses on the tributaries and thus economic loss.

Soil erosion along the banks of the Missouri is a major problem for land owners and land users, including the Tribes and tribal members. By increasing the flows in the spring and early summer to reflect a more "natural" flow regime, exposed banks will be subject to extreme pressure and thus erosion. Fluctuation of the flows after the simulated spring run-off would further erode banks. A management plan which will result in increased erosion and thus reduced water quality should not be considered as an alternative for management.

Finally, the Corps of Engineers must begin the process of ongoing monitoring of the geomorphology of the river in order to model the system accurately for decision making purposes. The models selected for the Missouri do not adequately reflect the processes operating on the river. Data gathering for this DEIS was poor and does not reflect the true status of the economics and environmental factors present on the river.

Generally, the DEIS was extremely cumbersome and difficult to read and understand. Tribal staffs have limited expertise and are relying on other federal agencies to make comments on the technical aspects of the statement. However, the data compiled on the social-economic impacts on the tribes was at best incomplete.

Sincerely,



Caleb Shields
Chairman
Fort Peck Tribes

A1-295





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Mni Sose Intertribal Water Rights Coalition
Supplemental Comments - ACOE Missouri River
Master Water Control Manual DEIS

February 28, 1995

I. Background

The Mni Sose Intertribal Water Rights Coalition represents 22 of the 28 Indian Nations of the Missouri River Basin. The Coalition remains very concerned with the Corps of Engineers' Draft Environmental Impact Statement on the Master Water Control Manual and related documents.

The Coalition has and continues to work very closely with our member Tribes on this issue. Mni Sose's Board of Directors has worked closely with our technical advisors in the development of our comments on the Corps' NEPA documents.

In September 1993, in conjunction with our member Tribes, Mni Sose filed its "Response to the Missouri River Master Water Control Manual PDEIS." The Coalition has commented on the Draft EIS on two occasions. On June 6, 1994, the Coalition provided to the Corps the "Initial Coalition Response to Preferred Alternative." In September 1994, the Coalition filed comments entitled "Request to the U.S. Army Corp of Engineers for Recognition of Indian Water Rights in the Master Water Control Manual." Those comments are incorporated by reference into this submission. The comments presented have supplemented our previous comments and address new subjects presented in the Draft Environmental Impact Statement (DEIS).

II. Cultural Resources

A. NAGPRA and Other Federal Requirements for Protection of Native Remains and Cultural Resources

The Native American Graves Protection and Repatriation Act (NAGPRA) is designed to stem the desecration of Native remains, funeral objects and other cultural items, by recognizing Tribal ownership and control over their repatriation. NAGPRA is designed to prevent both private museums and scavengers and federal agencies from impacting these objects and sites. As ACOE Missouri River operations affect Native remains and cultural sites, NAGPRA applies.

NAGPRA requires the Corps to return to the Tribes any unearthed remains or objects, and to ensure that the impacts of ACOE operations on Native cultural resources is minimized.

Additionally, the National Environmental Policy Act's regulations require special consideration of "the proximity to historic and cultural resources." 40 CFR 1508.27. The National Historic Properties Act also requires special evaluations of the impacts on federal lands of activities affecting certain historically significant sites.

The Mni Sose Coalition rejects the Preferred Alternative and Draft Environmental Impact Statement as currently written, for violating these provisions. As is shown below, the Corps simply has failed to confer adequate consideration on the system's impacts on Native sacred areas and cultural objects.

B. Treatment of "Historic Properties" in Technical Report Vol. 7H and the DEIS

Volume 7H of the technical reports supporting the DEIS treatment of Native American burial grounds, cultural objects and religious sites along the Missouri River as follows:

In some cases, an Indian might value Native archaeological sites in some entirely subjective, personal and mystical sense having nothing to do with scientific merit. Traditional religious practitioners, in particular, may refer to archaeological sites as "sacred," a term often

applied to things that in a mystical sense, are worthy of special status or respect. As generally applied to sites, we loosely interpret this as reference to an essence of the original living occupants which merits deference or respect...

The excavation, study and curation of Native American human remains has generated much criticism by Native Americans in recent years. Many contend the practice to be elitist and racist, at best, and unacceptable on religious grounds in any case. DEIS, Vol. 7H, p. 2.

The report then discusses the economic significance of historic properties.

Notwithstanding the language cited above, the Corps makes no effort to study ways that Native cultural resources may be protected: "Any historic property which is adversely affected, or will potentially be adversely affected by water management under one alternative, is subject to the same kind of effect under all other alternatives examined." Id. at 11.

The DEIS discusses the impacts of the Preferred Alternative on the various Pick-Sloan project purposes, but does not include an assessment of the preferred alternative's impact on Native remains, cultural objects and sacred sites. The Corps has thrown its arms up in the air, and come up with a self-serving generalization that all alternatives for system operations have the same impacts on Native cultural resources. There is no rationale or justification in support of this. The conclusion itself defies common sense. Consequently, the DEIS is fatally flawed and new studies must be undertaken on this issue.

C. Need for Further Study

The Corps undermines its own "manifest destiny" conclusions by recognizing that - "Water management regimens which are beneficial for some sites, in the sense that adverse affects may be decelerated, result in accelerated similar effects elsewhere. Shifts in the relative importance of different adverse effects may take place on a site-specific basis." Id. Although the ultimate conclusion is that there is nothing the Corps can do to mitigate the impacts of its operations on Native cultural resources, the Corps also states that different "water management regimens" will result in different levels of impacts on different sites.

Given this fact, clearly the Corps can mitigate the damage to culturally significant sites. A reasonable mitigation strategy would include:

- (1) Consultation with Tribal governments on sites, objects and other cultural resources to be protected.
- (2) Revision of DEIS to include Tribal priorities for the protection of Native remains and cultural resources.
- (3) Consideration of impacts of alternatives for system operations on the priority sites.
- (4) Selection of Preferred Alternative based upon the objective of minimizing impacts of system operations on priority sites.
- (5) Coordination with Tribes on mitigation efforts for impacts to cultural sites of revised Preferred Alternative.

In the DEIS, the Corps treats Native remains, artifacts and cultural objects as “historic properties.” Thus, the Corps treats our sacred heritage no differently than, say, an abandoned cavalry fort. This is highly inappropriate.

Clearly, new studies are required to locate the priority sites, and to determine how they may be protected in a new water management regimen.

The Corps has identified 158 historically or culturally significant sites at Fort Peck, 676 at Lake Sakakawea and 945 at Oahe. The data was not even provided for Lakes Sharpe, Francis Case and Lewis and Clarke.

Clearly, there is a substantial amount of relevant information in this area which the Corps does not possess. This results from inadequate consultation between ACOE and the basin’s Indians, for over 30 years. In addition, for those sites which have been identified, there is concern that the Corps does not properly identify the significance of the sites.

Mni Sose has identified an instance in which a site was discovered on an Indian Reservation along the Missouri River. The site included a ring of objects, which the corps identified as a tipi ring, with no cultural significance. The Indian

representatives properly identified the site's historic use and significance. It was a sacred area, utilized for fasting and visions. The Corps of Engineers had failed to properly identify a site which holds substantial religious and cultural significance to the people on whose Reservation the site is located.

This illustrates the importance of resurveying what the COE terms "historic properties," in consultation with the Tribes. The new survey should identify all sites utilized for Tribal cultural or religious activities, and their proximity to the water fluctuation zones. These sites cannot be valued in the same manner as barge traffic or recreation, so the ACOE should not value them as part of the computer modeling for alternatives. Instead, each alternative should include a narrative description of its impact on important Tribal cultural resources. In this manner, the issue of Tribal sacred areas, burial grounds and cultural areas shall be elevated to the status which federal law truly requires, in the NEPA process.

Ultimately, the Corps should work in close coordination with the Tribes to identify the culturally significant areas, and should evaluate the impact of the preferred alternatives on these sites. Otherwise, if the Corps proceeds and finalizes the EIS and preferred alternative, it will have once again ignored the concerns expressed by Indian Tribes that the construction and operation of the Pick-Sloan project constitutes cultural genocide.

D. Additional Comments and Concerns

The description of the issue of cultural resources contained in Vol. 7H (and cited above) must be rewritten. It is an inaccurate portrayal of the Native cultural resources issues.

It is inaccurate in two important ways. First, it de-emphasizes the fact that in this instance the context of the discussion is the operation of a public works project by a federal agency. This is not the type of situation where the threat to cultural resources is from private archaeologists or scavengers. It is from an agency of the United States. Thus, as stated above, the limits on federal actions impacting these resources that are contained in NAGPRA, NEPA and other statutes apply to the DEIS. The Corps has basically ignored these requirements.

Instead, the discussion philosophizes on the "perceived" threat to Native cultural resources posed by archaeologists. This narrative is no substitute for a

serious effort to protect Native remains and cultural objects, as is required by federal law. Worse yet, the narrative discussion and the inventory of sites contain serious inaccuracies. The narrative discussion projects the issue of unearthings by archaeologists as one between “religious factions” and archaeologists, involving “prehistoric” artifacts.

Along the Missouri River, the cultural resources impacted by Corps operations are not “prehistoric” artifacts. They are the human remains and cultural objects of our ancestors of recent generations. The religious sites that are impacted may in many instances be used today. The Corps states in the DEIS that “Religious factions remain unimpressed that ancient remains of all races have been objects of study...” *Id.* At 3. Archaeologists and scavengers unearth and take not only ancient Native cultural resources but relatively recent human remains and cultural objects. This is highly objectionable to the Indian Tribes, not just to “religious factions.”

The DEIS includes no respect for the role of Tribal governments in protecting Native cultural resources. The discussion of historic properties and human remains includes no mention of Indian Tribal governments.

The Tribal governments play a central role in the protection of cultural resources. The Congress recognized this in enacting NAGPRA. However, the Corps would have one believe that Tribes play no role whatsoever in cultural resources protection, but that instead the only Indians interested in the issue are some unidentified mystics. As a Coalition of Tribal governments concerned with the Missouri River, Mni Sose finds this to be highly objectionable.

Further, the narrative description of this issue confuses the mystical with the spiritual. There is a common thread of spirituality underlying the cultures of the various Indian Nations of the Missouri River basin. Indeed, it is this spirituality which gives life to our concern with the spirits of our ancestors, and in fact to our relationship with the earth, and to the Missouri River itself.

The Corps references our religious and spiritual motives as “mystic.” That is ridiculous and insulting. Webster’s Dictionary defines “mystic” as “involving mysterious powers, secret rites or teachings...occult.” This is a completely inaccurate description of the basis of our concerns with the protection of Native cultural resources. Substantively, it reflects that the entire approach of the Corps of

Engineers toward Native cultural resources is based upon flawed information, inadequate consultation and a misunderstanding about the very resources to be protected.

The only manner in which this most critical issue may get adequately addressed remains close consultation and coordination with the Tribal governments. The Corps should undertake a comprehensive study of Native cultural resources along the Missouri River. This study should be in close consultation with the Tribes. Upon surveying these resources, the Corps should determine how to best protect the priority sites, and only then select a Preferred Alternative for Missouri River operations.

III. Benefit Analysis

Special emphasis is given here to previous comments with respect to the failure of the PDEIS to address the economic impact or the benefit analysis of the proposed action, on the Tribes of the Missouri River Basin.¹ The PDEIS and DEIS have addressed the impacts on the states of the Missouri River Basin (see Table 4 of the Executive Summary of the Corps DEIS, included as Attachment B of this document) but have not addressed the impacts on the Tribes, either individually or collectively. Because the Tribes are sovereigns, having a relationship with the United States addressed by the Constitution and Treaties, and because the operation of the Missouri River dams is dependent upon and impacts upon the vested property rights of the Tribes, the analysis and display of the economic, environmental, cultural and other impacts of the preferred changes in operation of the Missouri River mainstem dams upon the Indian Tribes of the Missouri River Basin are required. Impacts upon the states have been specifically addressed and displayed², but impacts upon the Tribes have not been displayed.

IV. Treatment of Indian Water Rights

The right to use of water of the mainstem Missouri River, its tributaries and its aquifers by the Indian Tribes of the Missouri River Basin stems from their

¹Comments were submitted at page 26, Section 4.5 of the Coalition's September 1993 *Response to the Missouri River Master Water Control Manual PDEIS*.

²Impacts upon the States are displayed on page 54 of the DEIS, *Executive Summary*.

sovereignty and dominion over all lands and waters of the Missouri River Basin dating from time immemorial. Prior to 1803, neither France nor the United States affected the sovereignty of the Tribes. Since the purchase of the Louisiana Territory from France in 1803, the United States and the Tribes have entered into treaties establishing rights of the United States in areas beyond the boundaries of the Indian Reservations, but within those boundaries the Tribes retain and continue to possess sovereignty, land and resources they have always possessed and in which they exercised power without shadow of impediment respecting the aboriginal rights, title and interest. The following (repeated here, in part, and expanded, in part, from earlier submissions) describes the principals upon which both France and its successor, the United States, operated and continue to operate:

America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own and governing themselves by their own laws. It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied: or that the discovery of either by the other should give the discoverer rights in the country discovered, which annulled the pre-existing rights of its ancient possessors. (Worcester v. Georgia, 6 Petrie 515, 543)

...This principle, suggested by the actual state of things was that discovery gave title to the government by whose subject or by whose authority it was made, against all other European governments which title might consummated by possession' 8 Wheat. 573. (6 Petrie 515, 543-44)

...This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and making settlements on it. It was an exclusive principle which shut out the right of competition among those who have agreed to it; not one which could annul the previous rights of those who have not agreed to it. It regulated the right given by discovery among the European discoverers; but could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man. It gave the exclusive right to purchase, but did not found that right on the denial of the right of the possessor to sell. (Worcester v. Georgia, 6 Petrie 515, 544)

...This soil was occupied by numerous and warlike nations, equally willing and able to defend their possessions. The extravagant and absurd idea, that the feeble settlements made on the sea-coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title which, according to the common law of European sovereigns respecting America, they might rightfully convey, and no more. This was the exclusive right of purchasing such lands as the natives were willing to sell. The Crown could not be understood to grant what the Crown did not effect to claim; nor was it so understood. (Worcester v. Georgia, 6 P 515, p. 544-545)

...The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not less necessary to the existence of the Indians than the atmosphere they breathed. New conditions came into existence, to which those rights had to be accommodated. Only a limitation of them, however, was necessary and intended, not a taking away. In other words, the Treaty was not a grant of rights to the Indian, but a grant of rights from them - a reservation of those not granted. (United States v. Winans, 198 US 371)

The Tribes retain our rights to the use of water without diminishment. Our rights are not “under the so-called Winters doctrine.”³ The Winters doctrine confirms the title of the Tribes to water rights but does not create those rights. The rights are not federal rights. They are Indian rights, stemming from Indian possession and dominion since before the memory of man. Neither the rights nor the measurement of the rights are limited to agriculture or viable fishery purposes as suggested by the Corps. The rights are for all present and future beneficial purposes of civilization and the maintenance of a permanent homeland, including but not limited to, municipal, domestic, industrial, agriculture, mineral, hydropower, forest, range, aesthetics, fish, wildlife, recreation, and in stream flow purposes.

For the reason cited above, the Corps must properly treat all adjudicated/settled and unadjudicated/unsettled Indian water rights with equal force and dignity in its DEIS. The Corps has not done so.

³DEIS, p. 3-66. The text of the Corps treatment of the subject of Indian water rights and impacts of future Indian depletions is available for reference as Attachment A to these comments.

The DEIS describes the purported quantification of Indian water rights on the Fort Peck, Northern Cheyenne and Wind River Reservations⁴, but fails to address the magnitude of other unsettled/unadjudicated rights to the use of water. In that connection the United States has previously investigated or financed investigations of the water requirements to satisfy Indian water rights, at least in part, of Missouri river Basin Tribes, other than the Tribes cited by the Corps, as follows:⁵

Reservation	Annual Diversion (Acre feet)	Annual Depletion (Acre feet)
Blackfeet	878,000	323,000
Fort Belknap	211,000	87,000
Crow	2,114,000	738,000
Sioux Tribes	13,483,000	7,490,000
Total	16,686,000	8,638,000

While the Tribes may or may not endorse the quantities of water set forth above as probably measures of their rights to the use of water (and these quantities are not submitted here as the probable measure of the Tribes rights), the order of magnitude of the total unsettled/unadjudicated water rights of the Missouri River

⁴Recitation by the Corps of the magnitude of the rights purportedly quantified by settlement, the Wind River litigation or otherwise is not accepted here. The acceptance of the presentation by the affected Tribes is unknown and there is no attempt here to embrace or reject the Corps' analysis without the input from the affected Tribes. See Attachment A for the Corps treatment of this subject as taken from pages 3-66 through 3-68 of the DEIS.

⁵Tribal water requirements were summarized by the Congressional Research Service on the Montana Reservations: Warren Viessman, Jr. *et al*, November 1976, *Water Resources of the Missouri River Basin*, Environment and Natural Resources Policy Division, Congressional Research Service, prepared at the request of French Church, Chairman, Senate Subcommittee on Energy Research and Water Resources, Committee on Interior and Insular Affairs, 94th Congress, 2nd Session, p. 11-13. Water requirements on Sioux reservations were published: United Sioux Tribes, February 1979, *Missouri River Basin Water Supply and Water Requirement of the United Sioux Indian Reservations*.

Basin Tribes is represented by documentation available to the Corps and the amounts of potential claim are considerably greater than the amounts considered by the Corps in the DEIS.

It is inadequate for the Corps to dismiss considerations of the Tribes' vested rights to the use of water as a matter to be accommodated...*"as tribal water rights are quantified in accordance with applicable law and actually put to use"*...and that...*"the Study process does not prejudice any reserved Indian water rights of the Missouri River Basin Tribes"*... The magnitude of the Missouri River Basin Project and earlier Bureau of Reclamation projects throughout the river basin have impacted and continue to impact upon and prejudice Indian water rights. The generators on the federal mainstem dams from Garrison to Gavins Point and the tributary dams, such as Canyon Ferry and Yellowtail, require the undiminished flow of the Missouri River and its tributaries to produce electricity for customer contracts and revenues needed to repay the costs of the Missouri River Basin Pick-Sloan Program. There can be no wonder that Indian water rights and development of those rights have not been advocated by the United States, principal beneficiary of the project works.

The United States has incentive to diminish Indian water rights below the levels set forth in the table above, whether the diminishment is advanced in state court adjudication proceedings or in state compact settlements. This incentive is derived from the non-Indian water users throughout the semi-arid west.

In the present case, where reservoir operating rules are being established that will be relied upon by specialized sectors of the economies of the Nation and seven states, there will be increasing reluctance to recognize the magnitude of Indian water rights. There will be greater pressure upon political and judicial processes to impose criteria that constrain or limit Indian water rights. Parts of the economy of the states and the Nation that place reliance on the modified operation of the Missouri River Mainstem Dams as proposed in the DEIS will besiege tribal sovereignty and our aboriginal title to water. The DEIS must recognize the critical need to preserve and protect Indian water rights in the Missouri River Basin concurrently with any new operational plans to ensure the integrity of the Nation. Implementation of a new operating plan without proper treatment of Indian water rights will prejudice and damage those rights.

The Corps is the responsible federal agent for the proposed new operation and as such must take appropriate steps for proper treatment of Indian water rights. This results from the trust responsibility of the United States. Absent taking those steps,

the Nation, acting through the Corps as its agent, will prejudice and damage Indian water rights in the Missouri River Basin. The reservoirs of the Missouri River may provide the means of addressing the protection and preservation of Indian water rights in the Basin, and allocation of storage may be an element of a physical solution under the circumstances, despite Corps analysis that Tribes are not entitled to storage allocations.

Finally, it is noted that the Corps' future depletion analysis of up to 6.5 MAF was based primarily on development of Indian water rights as described in Attachment A.

V. Electrical Benefits

The Tribes note that the magnitude of the hydropower benefits as determined by the Corps has not been fully agreed upon between the Corps and the Western Area Power Administration. It is respectfully submitted that the differences be determined and addressed in full before preparation of the Final Environmental Impact Statement in order for the Tribes and others to fully assess the impacts. In particular, the determination of the change from the existing to new hydropower resource with the preferred alternative is needed. Also needed is the change in value of the resource, if any. These matters relate to the amount of firm power available in the future for contracting to Western customers and the price of the power. The DEIS is deficient because it does not properly address these two matters and permit evaluation by Tribes of the impact of the preferred plan.

Attachment A
Quoted Excerpts From Corps DEIS

3.10 Water Supply

Dependence on the Mainstem System as a source for water supply is continually increasing. Increases in use of the water normally result in decreases in the amount of water that is available for use by those downstream from the new users. The depletions of river flow are estimated by the Bureau of Reclamation. The Bureau also makes estimates of future levels of depletion based on projections of the increase in the number of water users along the Mainstem System. Based on the current (1990) estimates of depletion, the existing levels are expected to continue over the next decade.

Certain Missouri River Basin Indian Tribes are entitled to water rights in streams running through and along their reservations under the so-called Winters Doctrine. This doctrine refers to the 1908 U. S. Supreme Court decision in the case of Winters v. U. S., 207 U.S. 564 (1908). The reserved water rights are not forfeited by non-use. The basin Indian Tribes are in various stages of quantifying their water rights. Currently, such reserved water rights of tribal reservations have not been quantified in an appropriate legal forum or by compact with three exceptions: the rights embodied in the Compacts between Montana and the Tribes of the Fort Peck Reservation (awaiting Congressional approval), between Montana and the Tribes of the Northern Cheyenne Reservation, and the settlement for the Wind River Reservation in Wyoming. The current standard for quantification of reserved water rights where reservations were intended for agricultural purposes is the measure of practicable irrigable acreage. There may be other standards for quantifying tribal water rights, e.g. where a reservation was intended to maintain viable fisheries. The standard for quantification of tribal water rights is still evolving, however.

The Fort Peck Compact proposal now awaiting Congressional approval would entitle the Assiniboine and Sioux Indian Tribes of the Fort Peck Reservation to an annual diversion of 1 MAF with an annual consumptive use of 0.53 MAF. A Wyoming Supreme Court decision held that the United States, as trustee for the Shoshone and Arapahoe (sic) Tribes, was entitled to divert annually approximately 0.48 MAF of water. The Wyoming Supreme Court decision was affirmed, without opinion, by an equally divided United States Supreme court. The Northern Cheyenne Indian Reserved Water Rights Settlement Act, P.L. 102-374, has been

passed by Congress and signed by the President. This Compact would allow the annual use or disposition by the Tribe of 0.03 MAF of stored water in Big Horn Reservoir in Montana, as measured at the outlet work of the dam or at the diversion point from the reservoir, for any purpose. The Standing Rock Sioux Tribe has indicated in correspondence to the Corps that they believe their water rights should be quantified at 1.2 MAF. No estimates of what other Indian Tribes believe their quantifiable water rights to be have been provided.

The study considered only existing consumptive uses and depletions. Potential tribal water rights associated with these uses and depletions were not addressed. Indian reserved water rights are rights to divert water from a stream for beneficial use. Unless specifically provided for by law, these rights do not entail an allocation of storage. Accordingly, water must actually be diverted to have an impact on the operation of the Mainstem System. Further modifications to system operation, in accordance with pertinent legal requirements, will be considered as tribal water rights are quantified in accordance with applicable law and actually put to use. Thus, while existing depletions are being considered, the Study process does not prejudice any reserved Indian water rights of the Missouri River Basin Tribes. Potential future depletions are examined in the impact analysis in Chapter 6.

6.3 Depletion Analysis

This section presents the impacts associated with historic and potential future depletions on Mainstem System economic uses and environmental resources. Depletions are the volume of runoff water that is lost to evaporation and diverted for consumptive uses, such as irrigation, municipal, and industrial uses. Depletions also reflect the effects of tributary reservoirs. For purposes of this discussion, the following depletion levels do not include evaporation from the Mainstem System lakes, which are accounted for separately: The Bureau of Reclamation (BOR) provided estimates of past, present and future depletion levels. The baseline for this study as the 1990 depletion level. Before 1898, the depletions were estimated to be 1.5 and 4.3 MAF at Sioux City and the mouth, respectively. Values for the 1990 depletion level are 4.8 and 7.3 MAF at these two locations, respectively, Table 6.3-1 presents the increase in depletions estimated by the BOR for the year 2020 compared to the 1990 depletion level.

The additional depletions presented in Table 6.3-1 would result in changes in value to the uses and resources studied. The incremental change to the economic use

and environmental resource values for the preferred alternative, given the 2020 depletion level, are presented in Table 6.3-2.

Two other depletion levels--the 1990 level plus 3.2 MAD and 6.5 MAF--were evaluated. Tables 6.3-3 and 6.3-4 present the distribution of these two additional depletion levels. These higher depletion levels were examined to evaluate the impacts of potential Tribal diversion of water and other major projects.

The incremental change to the economic use and environmental resource values for the preferred alternative given the additional 3.2 MAF of depletions presented in Table 6.3-3 are presented in Table 6.3-5.

The incremental change to the economic use and environmental resource values for the preferred alternative given the additional 6.5 MAF of depletions presented in Table 6.3 are presented in Table 6.3-6.

As shown in Tables 6.3-2, 6.3-5 and 6.3-6, all of the economic uses except flood control are negatively impacted by increased depletions. Flood control is positively impacted because lake levels and river flows would lower at the higher depletion levels. All other economic uses are negatively impacted for the same reason. Physical habitat for native river fish is positively impacted give the 2020 and 1990-plus-3.2-MAF depletion levels because the resultant lower river flows in the later summer and fall more closely mimic natural flow. The negative impact shown for the 1990 plus 6.5 MAF is due to the more frequent termination of the spring rise component that produces more mono-typical low flows. Tern and plover habitat would be negatively impacted by additional depletions because the more frequent termination of the spring rise component would result in fewer high flows that scour vegetation off of sandbar islands. Total wetlands habitat would be positively impacted by additional depletions because of increases in the delta wetlands at the headwaters of the mainstem lakes and the tributaries entering the mainstem lakes. Increased depletions cause consistently more warm water river fish habitat below Fort Peck Dam and consistently less warm water river fish habitat below Garrison and Fort Randall Dams. This due to the change in the timing of the release throughout the year that the increased depletions would cause. Increased depletions would cause a decrease in cold water river fish habitat. This is due to warmer release water temperatures cause by lower lake levels and lower flows. Young fish production in the mainstem lakes would be negatively impacted by additional depletions because average lake levels would be lower and the modified intra system regulation would be less effective at raising pool levels in the spring. Increased depletions would

negatively affect cold water fish habitat in the mainstem lakes because of lower average lake levels. Riparian habitat would be positively affected by increased depletions due to lower average river flows and lake levels. Increased depletions would positively impact historic properties since lower average lake levels would decrease the potential for erosion.

Section 17 Future Depletions

In 1987 the Billings, Montana office of the Bureau of Reclamation reanalyzed the depletions for each reach upstream from Sioux City and showed no new depletions past 2005. The depletions for the alternatives used in the study are current to the last year of the study (1993). A side study was run which increased the depletions beyond those used in the current analysis.

Three variations were run using the preferred alternative, ABAAZ2. Each of these runs utilized a different level of depletions as illustrated in Table 17-1. The first variation, ABAAZA, used a depletion level for the year 2020 as found in the above-mentioned report. The second variation, ABAAZB, included depletions approximating Indian Tribe allocations at a future date. The information for these depletions was found through different sources. According to Section 3-10.1 of the PDEIS, the Assiniboine and Sioux Indian Tribes of the Fort Peck Reservation are entitled to an annual consumptive use of 0.53 MAF for the Fort Peck Compact proposal awaiting Congressional approval, and the United States, as trustee for the Shoshone and Arapahoe (sic) Tribes, is entitled to annually divert approximately 0.48 MAF based upon Wyoming and United States Supreme Court decisions. Therefore, a total of 1.0 MAF of future depletions was attributed to Lake Sukiyaki for the Indian Tribes. The Standing Rock Tribal Council estimates that the annual water needs of the Standing Rock Reservation equates to 1.2 MAF based in part on the existence of 303,000 irrigable acres on the Reservation (Standing Rock Sioux Tribe - July 7, 1993). This depletion of 1.2 MAF is attributed to Lake Oahe. Future depletions for Indian Tribes at Fort Peck and Fort Randall were approximately at 0.5 MAF each. The third variation, ABAAZC, doubled the depletion amounts used in ABAAZB to the nearest whole number along with adding further depletions for downstream water uses. The future depletions of 0.5 MAF at Nebraska City and Kansas City were added for the State of Missouri who requested a look at the effects of downstream depletions.

Table 17-1

Depletions in MAF

Study ID	Fort Peck	Garrison	Oahe	Fort Randall	Nebraska City	Kansas City	Total
ABAAZ2							
ABAAZA	0.1	0.5	0.2	0.0			0.8
ABAAZB	0.5	1.0	1.2	0.5			3.2
ABAAZ C	1.0	2.0	2.0	1.0	0.0	0.3	6.5

Depletions utilized in the study alternatives total 7.3 MAF. By glancing at the total column in Table 17-1, it is readily apparent as future depletions are increased from an additional 0.8 MAF for study ABAAZ2 to 6.2 MAF for study ABAAZC the study results will be greatly impacted.

ATTACHMENT B

Table 4.

Benefits by states (in \$Millions)

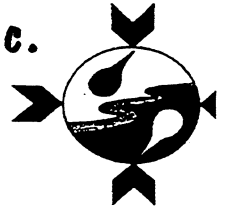
(MAX = Maximum attainable; CWCP = Current Water Control Plan; PA = Preferred Alternative)

		Montana	Wyoming	North Dakota	South Dakota	Nebraska	Iowa	Kansas	Missouri
<i>NAVIGATION</i>	MAX	0	0	0	0.2	4.4	4.2	2.8	6.2
	CWCP	0	0	0	0.2	4.4	4.2	2.8	6.2
	PA	0	0	0	0.1	3.7	3.5	2.3	5.3
<i>FLOOD CONTROL</i>	MAX	0.5	0	1.3	5.6	13.0	10.7	3.8	9.9
	CWCP	0.5	0	1.4	5.6	12.8	10.5	3.8	9.9
	PA	0.5	0	1.2	5.6	12.1	9.8	3.7	9.7
<i>HYDROPOWER</i>	MAX	46.9	0	83.1	119.5	177.5	81.3	0	0
	CWCP	45.6	0	80.3	115.3	168.9	78.9	0	0
	PA	45.4	0	80.3	115.3	170.1	78.8	0	0
<i>RECREATION</i>	MAX	3.3	0	23.9	28.2	11.3	4.0	0.6	2.5
	CWCP	2.7	0	20.0	27.3	11.7	4.2	0.6	2.5
	PA	3.0	0	21.7	27.5	11.4	4.1	0.6	2.5
<i>WATER SUPPLY</i>	MAX	3.2	4.4	29.7	24.8	245.6	89.8	12.9	87.0
	CWCP	3.1	4.4	28.5	24.0	245.2	89.7	12.6	86.7
	PA	3.2	4.4	28.5	24.0	245.5	90.0	12.6	86.6
TOTAL	CWCP	52	4	130	172	443	188	20	105
	PA	52	4	132	173	443	186	19	104



MNI-SOSE Intertribal Water Rights Coalition, Inc.

Phone (605) 343-6054 - Fax (605) 343-4722
PO Box 226, 514 Mt. Rushmore Rd.
Rapid City, South Dakota 57709-0226



March 16, 1995

Colonel Michael Thuss, Division Commander
U.S. Army Corps of Engineers
Missouri River Division
12565 West Center Road
Omaha, NE 68144-3869

RE: April 27, 1995 Meeting on Missouri River Master Manual DEIS

Dear Colonel Thuss:

Thank you for scheduling a meeting with me to discuss the recent developments involving the Missouri River Master Manual Draft Environmental Impact Statement. Pursuant to Colonel Whisler's invitation last week, we shall meet in your office on Wednesday, April 12 at 1:00 P.M. I will attend the meeting along with Office Manager Woody Corbine, Attorney Peter Capossela and members of the Executive Committee.

The Coalition remains very concerned with the extent that our rights are being considered in the Corps' decision-making process. As you know, the Tribes have raised the protection of cultural resources along the Missouri River and the recognition of our water rights as our priorities in the Master Manual revision process. We have not received any feedback from the COE to indicate that our concerns are being addressed. Instead, we see the Corps responding to the concerns of economic interest groups, such as the navigation industry, by delaying the NEPA process.

Nevertheless, this presents a genuine opportunity for the Corps to perform the types of studies that we have been advocating as well. We look forward to discussing this with you on April 12.

Thank you again for scheduling this meeting. I look forward to a productive meeting with you and your staff.

Sincerely,

Richard Bad Moccasin
Richard Bad Moccasin D.J.
Executive Director

Executive Director:
Richard Bad Moccasin

Member Tribes:
Sisiboiné & Sioux Tribes of
Fort Peck, Poplar, Montana

Cheyenne River Sioux Tribe,
Eagle Butte, South Dakota

Chippewa Cree Tribe,
Box Elder, Montana

Crow Creek Sioux Tribe,
Fort Thompson, South Dakota

Devil's Lake Sioux Tribe,
Fort Totten, North Dakota

Fort Belknap Tribe,
Harlem, Montana

Kickapoo Tribe of Kansas,
Horton, Kansas

Lower Brule Sioux Tribe,
Lower Brule, South Dakota

Northern Cheyenne Tribe,
Lame Deer, Montana

Oglala Sioux Tribe,
Pine Ridge, South Dakota

Omaha Tribe,
Bluff, Nebraska

Ponca Tribe of Nebraska,
Niobrara, Nebraska

Prairie Band of Potawatomi,
Mayetta, Kansas

Rosebud Sioux Tribe,
Rosebud, South Dakota

Sac & Fox of Missouri,
Reserve, Kansas

Santee Sioux Tribe,
Niobrara, Nebraska

Sisseton-Wahpeton Dakota
Nation, South Dakota

Standing Rock Sioux Tribe,
Fort Yates, North Dakota

Three Affiliated Tribes,
New Town, North Dakota

Turtle Mountain Band of
Chippewas, North Dakota

Winnebago Tribe of Nebraska,
Winnebago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni-Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

May 2, 1995

Dr. John H. Zirschky
Acting Assistant Secretary of the Army for Civil Works
108 Army Pentagon
Washington, DC 20310-0108

Dear Dr. Zirschky:

At the Mni Sose Intertribal Water Rights Coalition Board of Directors' Meeting held on April 27, 1995, the Coalition approved a resolution which pertains to the current review and update of the Missouri River Master Water Control Manual for the Missouri River main-stem dams. Enclosed for your information, is the resolution (#95-13).

Should you have questions or concerns regarding the resolution please call the Mni Sose offices at (605) 343-6054.

Sincerely,

Richard Bad Moccasin
Richard Bad Moccasin
Executive Director

enc.

Executive Director:
Richard Bad Moccasin

Member Tribes:
Assiniboine & Sioux Tribes of
Fort Peck, Poplar, Montana

Cheyenne River Sioux Tribe,
Eagle Butte, South Dakota

Chippewa Cree Tribe,
Box Elder, Montana

Crow Creek Sioux Tribe,
Fort Thompson, South Dakota

Devil's Lake Sioux Tribe,
Fort Totten, North Dakota

Fort Belknap Tribe,
Harlem, Montana

Kickapoo Tribe of Kansas,
Horton, Kansas

Lower Brule Sioux Tribe,
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Northern Cheyenne Tribe,
Lame Deer, Montana

Oglala Sioux Tribe,
Pine Ridge, South Dakota

Omaha Tribe,
Walkhill, Nebraska

Ponca Tribe of Nebraska,
Niobrara, Nebraska

Prairie Band of Potawatomi,
Mayetta, Kansas

Rosebud Sioux Tribe,
Rosebud, South Dakota

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Chippewas, North Dakota

Winnebago Tribe of Nebraska
Winnebago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni-Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

May 2, 1995


Colonel Michael F. Thuss
Division Commander
Missouri River Division
U.S. Army Corps of Engineers
12565 West Center Road
Omaha, NE 68144-3869

Dear Colonel Thuss:

At the Mni Sose Intertribal Water Rights Coalition Board of Directors Meeting held on April 27, 1995, the Coalition approved a resolution which pertains to the current review and update of the Missouri River Master Water Control Manual for the Missouri River main-stem dams. Enclosed, for your information, is the resolution (#95-13).

Should you have questions or concerns regarding the resolution please call the Mni Sose offices at (605) 343-6054.

Sincerely,


Richard Bad Moccasin
Executive Director

enc.

Telephone (605)343-6054.....FAX (605)343-4722.....BBS (605)343-0983

Executive Director:
Richard Bad Moccasin

Member Tribes:
Arapaho & Sioux Tribes of
Fort Peck, Poplar, Montana

Cheyenne River Sioux Tribe,
Eagle Butte, South Dakota

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Box Elder, Montana

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Chippewas, North Dakota

Winnnebago Tribe of Nebraska
Winnnebago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni-Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

May 2, 1995


Lieutenant Col. John L. Whisler, Jr.
Deputy Division Engineer
U.S. Army Corps of Engineers
Missouri River Division
12565 West Center Road
Omaha, NE 68144-3869

Dear Lieutenant Col. Whisler, Jr.

At the Mni Sose Intertribal Water Rights Coalition Board of Directors' Meeting held on April 27, 1995, the Coalition approved a resolution which pertains to the current review and update of the Missouri River Master Water Control Manual for the Missouri River main-stem dams. Enclosed, for your information, is the resolution (#95-11).

Should you have questions or concerns regarding the resolution please call the Mni Sose offices at (605) 343-6054.

Sincerely,


Richard Bad Moccasin
Executive Director

enc.

Executive Director:
Richard Bad Moccasin

Member Tribes:
Assiniboine & Sioux Tribes of
Fort Peck, Poplar, Montana

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Marty, South Dakota

Mni-Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

May 2, 1995

Mr. Larry Cieslik
Project Manager
MR Master Water Control Manual & Update
U.S. Army Corps of Engineers
12565 West Center Road
Omaha, NE 68144-3869

Dear Mr. Cieslek:

At the Mni Sose Intertribal Water Rights Coalition Board of Directors Meeting held on April 27, 1995, the Coalition approved a resolution which pertains to the current review and update of the Missouri River Master Water Control Manual for the Missouri River main-stem dams. Enclosed, for your information, is the resolution (#95-13).

Should you have questions or concerns regarding the resolution please call the Mni Sose offices at (605) 343-6054.

Sincerely,

Richard Bad Moccasin
Richard Bad Moccasin
Executive Director

enc.

Telephone (605)343-6054.....FAX (605)343-4722.....BBS (605)343-0983

Executive Director:
Richard Bad Moccasin

Member Tribes:
Sisiboiné & Sioux Tribes of
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Eagle Butte, South Dakota

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Yankton Sioux Tribe
Marty, South Dakota

Mni-Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

May 2, 1995

Mr. David F. Vader
Native American Coordinator
U.S. Army Corps of Engineers, Omaha District
215 North 17th Street
Omaha, NE 68102-4978

Dear Mr. Vader:

At the Mni Sose Intertribal Water Rights Coalition Board of Directors' Meeting held on April 27, 1995, the Coalition approved a resolution which pertains to the current review and update of the Missouri River Master Water Control Manual for the Missouri River main-stem dams. Enclosed for your information, is the resolution (#95-13).

Should you have questions or concerns regarding the resolution please call the Mni Sose offices at (605) 343-6054.

Sincerely,

Richard Bad Moccasin
Richard Bad Moccasin
Executive Director

enc.

Executive Director:
Richard Bad Moccasin

Member Tribes:
Assiniboine & Sioux Tribes of
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Mni-Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

May 2, 1995

Mr. Richard Opper, Executive Director
Missouri River Basin Association
P. O. Box 9193
Missoula, MT 59807-9193

Dear Mr. Opper:

At the Mni Sose Intertribal Water Rights Coalition Board of Directors' Meeting held on April 27, 1995, the Coalition approved a resolution which pertains to the current review and update of the Missouri River Master Water Control Manual for the Missouri River main-stem dams. Enclosed for your information, is the resolution (#95-13).

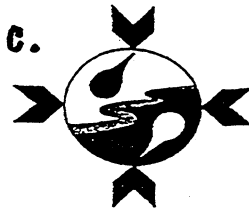
Should you have questions or concerns regarding the resolution please call the Mni Sose offices at (605) 343-6054.

Sincerely,

Richard Bad Moccasin
Richard Bad Moccasin
Executive Director

enc.

Telephone (605)343-6054.....FAX (605)343-4722.....BBS (605)343-0983



MSC 95-13

**A RESOLUTION OF THE MNI SOSE INTERTRIBAL WATER RIGHTS COALITION
RESPECTING THE REVIEW AND UPDATE OF THE MISSOURI RIVER MASTER
WATER CONTROL MANUAL OF THE UNITED STATES FOR THE MAIN STEM DAMS**

- WHEREAS, the Indian Tribes of the Missouri River Basin had possession of and dominion over all lands of the Missouri River Basin, the Missouri River main stem, the Missouri River tributaries, and aquifers of the basin from time immemorial and before settlement by European immigrants; and
- WHEREAS, the Indian tribes of the Missouri River Basin were recognized and respected as sovereign nations by the European nations that journeyed to the North American continent including Great Britain, France, and the ultimate successor to the Louisiana Purchase in the Missouri River Basin: the United States; and
- WHEREAS, the Indian Tribes of the Missouri River Basin entered into Treaties, were subjected to Congressional Acts and Executive Orders of the United States, and in those Treaties, Congressional act, and Executive Orders, the tribes reserved to themselves, explicitly or impliedly, sufficient water of the Missouri River, Missouri River tributaries, and aquifers of the Missouri River Basin to meet all needs of the Indian tribes at the time of reservation establishment and into the future for all generations; and
- WHEREAS, the United States enacted the 1944 Flood Control Act for the purposes of developing a massive project for supply, flood control, navigation, hydropower, recreation and other purposes, a project which relies for its operation on the reserved water rights of the tribes and upon hundreds of thousands of acres of lands of certain tribes along the mainstem Missouri River and its tributaries; and
- WHEREAS, the plan of the United States enacted in the 1944 Flood Control Act was to include development of parts of the reserved waters of the Indian tribes of the Missouri River Basin and such development on behalf of the Indian tribes was suppressed and was not undertaken; and
- WHEREAS, the Corps of Engineers is the agent of the United States designated to administer, operate, and control the Missouri River main stem dams developed by the United States as authorized by the 1944 Flood Control Act; and
- WHEREAS, the Corps of Engineers is presently updating and reviewing the Master Water Control

Manual for the Missouri River main stem dams, which relies on the reserved water of the Indian tribes of the Missouri River Basin and upon lands taken from the tribes; and

WHEREAS, the tribes of the Missouri River Basin, acting (1) individually and (2) collectively through the Mni Sose Intertribal Water Rights Coalition have objected to the draft Environmental Impact Statement of the Corps of Engineers respecting the review and update of the Missouri River Master Water Control Manual for a number of reasons including , but not limited to, the failure of the DEIS to properly acknowledge and respect Indian water rights within the Missouri River Basin, failed to display the socio-economic impacts of the operation of the Missouri River main stem dams on the economies of the respective tribes and failed to display impacts upon the prior and superior rights of the Missouri River Basin tribes as reserved by those tribes either explicitly or impliedly at the time of the treaties and as part of the Congressional Acts and Executive Orders of the United States,, now;

THEREFORE BE IT RESOLVED, the Board of Directors of the Mni Sose Intertribal Water Rights Coalition directs the President and Executive Director, necessary staff and necessary technical team members to take steps required, including (but not limited to) meetings and correspondence with Missouri River Basin states, the White House, members of Congress and staff of appropriate Congressional committees to ensure that the rights to the use of water reserved by the Indian tribes of the Missouri River Basin receive proper protection, preservation, acknowledgment and consideration in the next and final plan of the review and update of the Missouri River Master Water Control Manual for the Missouri River main stem dams of the United States, in preparation by the U.S. Army Corps of Engineers; and

BE IT FURTHER RESOLVED, the issues to be addressed in the steps taken above will include (but not be limited to) the following:

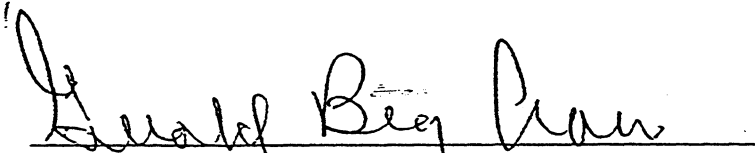
- treatment of all tribal issues in the Master Manual without separation or diminishment by the Corps of Engineers, including water rights, cultural and spiritual values, economic consequences, among other things;
- advancement of the magnitude or amount of water claimed by the Missouri River Basin tribes to the extent that tribes are willing, as approved by the respective Tribal Councils, to include the amounts of their claims individually or collectively in the totals; provided, however, that all claims will be qualified as preliminary, as floors rather than ceilings, and subject to further modification and do not constitute a final quantification by the tribes;
- insistence by the tribes that the socioeconomic consequences of the Missouri River Master Water Control Manual on the Indian tribes of the Missouri River Basin be displayed with impacts on hydropower, flood control, navigation, recreation, water supply and all other purposes for which tribes presently use or need water and all other purposes for which future generations of the Indian tribes need water.

the degree of reliance by Ohio River interests and Mississippi River interests on the reserved water rights of the Missouri River Basin and Mississippi River Basin Tribes.

BE IT FINALLY RESOLVED that other tribes with interests in the Red River, Mississippi River, and the Ohio River may at a later date be encompassed by this resolution; if those tribes so elect.

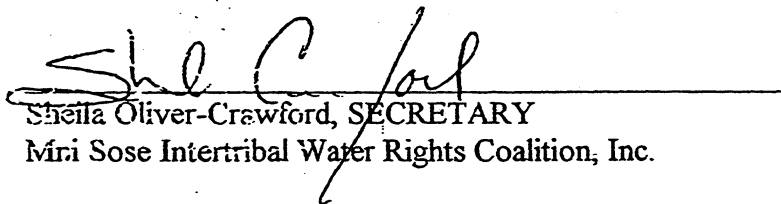
CERTIFICATION

We, the undersigned President and Secretary of the Mni Sose Intertribal Water Rights Coalition, Inc. hereby certify that the Mni Sose Board of Directors, of whom Sixteen, constituting a quorum, were present at a meeting hereof and duly called, noticed, convened and held the 27th day of April, 1995 that the foregoing resolution was duly adopted by the affirmative vote of Thirteen members, with None opposing, One abstaining, and Two not voting.



Gerald Big Crow, PRESIDENT

Mni Sose Intertribal Water Rights Coalition, Inc.



Sheila Oliver-Crawford, SECRETARY

Mni Sose Intertribal Water Rights Coalition, Inc.

Executive Director:
Richard Bad Moccasin

Member Tribes:
Assiniboine & Sioux Tribes of
Fort Peck, Poplar, Montana

Cheyenne River Sioux Tribe,
Eagle Butte, South Dakota

Chippewa Cree Tribe,
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe,
Fort Thompson, South Dakota

Devil's Lake Sioux Tribe,
Fort Totten, North Dakota

Fort Belknap Tribe,
Harlem, Montana

Kickapoo Tribe of Kansas,
Horton, Kansas

Lower Brule Sioux Tribe,
Lower Brule, South Dakota

Northern Cheyenne Tribe,
Lame Deer, Montana

Ogala Sioux Tribe,
Pine Ridge, South Dakota

Omaha Tribe,
Walthill, Nebraska

Ponca Tribe of Nebraska,
Niobrara, Nebraska

Prairie Band of Potawatomi,
Mayetta, Kansas

Rosebud Sioux Tribe,
Rosebud, South Dakota

Sac & Fox of Missouri,
Reserve, Kansas

Santee Sioux Tribe,
Niobrara, Nebraska

Sisseton-Wahpeton Dakota
Nation, South Dakota

Standing Rock Sioux Tribe,
Fort Yates, North Dakota

Three Affiliated Tribes,
New Town, North Dakota

Turtle Mountain Band of
Chippewas, North Dakota

Winnebago Tribe of Nebraska
Winnebago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni-Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

June 27, 1995

Colonel Michael F. Thuss
Division Engineer
U.S. Army Corps of Engineers
12565 West Center Road
Omaha, NE 68144-3869

Dear Colonel Thuss:

Thank you for your letter of June 5, 1995 regarding your proposal for revisiting the Draft Environmental Impact Statement (DEIS) for the Missouri River Master Water Control Manual (Master Manual). The Mni Sose Intertribal Water Rights Coalition applauds the decision by the Army Corps of Engineers to reconsider its time lines for final action and the need for additional studies before taking final action on the Missouri River Master Water Control Manual Review and Update. In Mni Sose's comments on the draft Environmental Impact Statement (DEIS), we urged the Corps of Engineers to delay final action and to undertake further studies on native cultural and environmental resources in the basin. We also commented on the inadequate treatment of Indian reserved water rights in the DEIS.

These comments contain Mni Sose's preliminary position on the Corps' proposal. As set out below, Mni Sose strongly opposes the proposed recommendations and collaborative process. We hope you can provide some clarification if we have misunderstood your meaning:

1. We disagree with your categorization of tribal water rights and cultural concerns as "non-operational" issues. These issues are of decidedly greater importance than the three "operational" issues which you have identified. You admit in your letter that "without an effort to address some of these non-operational issues, however, resolution of the Master Manual issues would be difficult." We suggest that you drop the distinction between "operational" and "non-operational" issues. All of the tribal issues constitute "water control" issues which, after all, form the basis for the Master Manual in the first place.

Although the Corps identifies "Tribal issues" as an issue that has arisen in the Master Manual Review and Update, the Corps does not commit to

Colonel Michael F. Thuss
Division Engineer
U.S. Army Corps of Engineers
June 27, 1995
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undertaking additional studies of the impacts of the preferred alternative on native cultural, economic, and environmental resources. As described in more detail in Mni Sose's comments on the DEIS, the Corps should work with the Tribes in developing a comprehensive mitigation strategy to protect native cultural resources. Instead, the Corps proposes to undertake additional studies on the impacts of the preferred alternative on downstream navigation, flooding, and other issues that have little bearing on tribal concerns. In fact, with due respect for the issues raised by various other concerned parties, these issues are clearly of far less national importance than the Tribal treaty rights and native cultural, economic, and environmental resource issues that we have raised.

The Corps suggests that the proposed "collaborative process" take place apart from the final EIS. The Corps identifies several areas for further study or modification. Presumably, these modifications shall be incorporated in the operational alternatives. Indian water rights and the protection of native cultural, economic, and environmental resources are operational issues. They should likewise be included in the listing by the Corps of the "areas need(ing) further study or modification." Instead, they are listed as non-operational issues to be addressed as part of the "collaborative process." These remain primary concerns of the Tribes of the Mni Sose Coalition.

The Corps' suggestion that the collaborative process take place independently of the assessment of operational alternatives in the EIS is very significant. It signifies that the Corps of Engineers does not respect the nature and existence of Indian water rights. Moreover, the Corps' studies on alternatives to the current Master Manual contain no realistic description of the issues and how they affect COE operations. The Corps instead proposes to include the Tribes' legal and property rights on an agenda for political discussion with the states. This is unacceptable because, historically, the states have been hostile to Indian interests.

2. You note your expectation that "some issues raised may be outside the Corps' authority or interest to pursue." We believe that all the issues are within the scope of the Corps' authority. If you merely have no interest in examining the tribal issues, we would remind you that as our Trustee, your beneficiary's welfare must be your interest. Mni Sose has commented at length on the trust considerations implicated in the PDEIS and DEIS. Nonetheless, the Corps' recommendations and proposal are a continuation of the agency's complete abdication of any notion of trust responsibilities to the Tribes. The Corps should be taking actions to protect, preserve, and enhance tribal water rights. Instead, they ignore tribal rights in developing and assessing the operational alternatives. A trustee must exercise an active interest in addressing the beneficiaries' resources and welfare.

Colonel Michael F. Thuss
Division Engineer
U.S. Army Corps of Engineers
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The issues raised by Mni Sose simply do not represent more political, economic, or other "special interests." We are not another special interest group. The status of an Indian Nation is that of a "domestic nation," which is "higher than a state." DeLoria and Lytle, The Nations Within. Yet the Corps proposes a "collaborative process," where tribal legal and property rights shall be treated like the political interests of business groups (e.g. downstream navigation industry, upstream recreation industry) or environmental organizations. This is unacceptable.

Furthermore, the "collaborative process" as proposed does not even properly recognize the role of the Tribes in the process itself. For example, the Tribes are not included in proposed negotiations between states and federal agencies during periods of drought and during the Annual Operating Plan process. Ultimately, the Corps must acknowledge and operate in accordance with the substantive rights of the Tribes and the proper roles of the Tribes and the federal trustee. The Corps action confuses the subordinate roles which should be played by states and concerned interest groups in such a process.

3. You suggest that changes in the intrasystem regulation should be studied and resolved annually since changes "would not affect system release." In fact, recognition of tribal rights may profoundly affect the intrasystem regulation of many, if not all, system features. The protection of tribal water rights could well affect system releases, and provisions for such protections should be made through the Master Manual, not the Annual Operating Plan.

The Corps' proposal contains no recognition of Indian water rights. Mni Sose still has received no indication that the Corps of Engineers has considered tribal comments regarding the inaccurate treatment of water rights in the PDEIS and the DEIS. Any additional studies or consultations by the Corps should include revisions on the treatment of Indian water rights, so a revised Master Manual at least contains accurate information on the existence of Indian reserved water rights and the reliance of the Corps' operation on Indian waters, title to which resides with the tribes. Moreover, the operational alternatives should be revised to contemplate the consumptive and non-consumptive uses (including in-place uses) of their water by the Tribes.

4. Although you mention Tribes several times in your report, you neglect to include Tribes in the proposed process to address a drought occurring prior to final adoption of the Master Manual. We remind you that the states are separate entities from the tribes. Any process evolving for proper administration and management of the resources of the basin must include the tribes. You should also include the tribal agencies and natural resource departments on your technical committees.

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5. We are concerned with your comment that "participants in this [collaborative] process would be asked to include both in-kind services and cash to support resolution of the issues of interest to them." Please address this issue in greater detail so that we have no misunderstanding of your intent. If you are contending that we must pay for the process and the solutions respecting the "non-operational" issues as defined by the Corps, we can merely reiterate your responsibility as a trustee to protect the properties of the tribes. This is the Corps' operational plan and the Corps' public process. It is the Corps' responsibility to fund the process and the solution. Indeed, it is the Corps' responsibility to fund the participation of the tribes, as our trustee.

6. The decoupling of tribal issues from the final EIS violates President Clinton's Executive Order entitled Government-to-Government Relations with Native American Tribal Governments (Attachment A). Subsection (c) of the Executive Order provides that "Each executive department and agency shall assess the impact of federal government plans, projects, programs, and activities on tribal trust resources, and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities."

The DEIS contains inaccurate statements about the existence and status of Indian reserved water rights. Too, the DEIS contains no explanation of how the preferred alternative is impacted by Indian water rights. The Corps' proposal for the "collaborative process" and "future direction" of the NEPA studies expressly states that Indian water rights and the protection of tribal cultural resources are non-operational issues. The Executive Order requires the Corps to "assess the impact" of government projects on tribal resources, and to "assure that tribal government rights and concerns are considered." Both the DEIS and proposal for the collaborative process violate the Executive Order.

7. By proposing to decouple the operational issues from what are characterized as non-operational issues, the Corps would violate the requirements of the National Environmental Policy Act (NEPA). NEPA requires the Corps to complete a "detailed statement" on "environmental impact," "alternatives to the proposed action" and the relevant resources associated with the proposed action. NEPA 102, 42 U.S.C. § 4332. This includes assessment of "possible conflicts between the proposed action and the objectives of (Tribal) land use plans (and) policies" and assessment of the impacts on "historic and cultural resources." 40 CFR 1502.16(f) and (g). In fact, NEPA identifies as national policy the preservation of "historic, cultural and natural aspects of our national heritage." NEPA 101, 42 U.S.C. § 4331(b).

Colonel Michael F. Thuss
Division Engineer
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The statute also mandates an "interdisciplinary approach" to the study. Id. at 102, 4332(A). The interdisciplinary approach is to insure the integrated use of natural and social sciences and environmental planning, in the study itself. Conservation Council of North Carolina v. Froehke, 341 F. Supp. 222 (D.C. N.C. 1972). The lead agency is to accomplish this comprehensive study by defining the purpose and need for the proposed action in an adequately broad manner. 40 CFR 1502.13. "The agency may not define the objectives of its action in terms so unreasonably narrow that . . . (the result of) the EIS is a foreordained formality." Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991). Further, "the agency should always take into account the needs and goals of the parties involved." Id. at 196 (emphasis added).

The Corps cannot decouple what it characterizes as operational issues from what it characterizes as non-operational issues, and proceed with a final EIS on "operational issues" and undertake a separate "collaborative process" on the "non-operational" issues. It must "take into account" these issues, including Indian water rights and cultural and environmental resource concerns, in assessing the alternatives in the EIS. The federal courts mandate this approach.

8. In addition, the Corps "should always consider the views of Congress in other Congressional directives." Id. In many enactments, the Congress has expressed the federal policy of Indian sovereignty and Self Determination. See, e.g., Indian Self-Determination and Education Assistance Act of 1973, P.L. 93-638. Congress has also specifically expressed the federal policies to preserve and protect Indian reserved water rights and assist tribes in their wise use (Water Resources Development Act of 1992, P.L. 102-575), as well as Native American cultural resources (Native American Graves Protection and Repatriation Act, P.L. 101-601).

Accordingly, federal law prohibits the Corps of Engineers from separating the Tribal water rights and cultural and environmental resource concerns from the alternatives assessed in the final EIS. These issues **must** be included in the areas identified for "further study or modification."

9. Subject to our objections listed above, Attachment B contains our outline of areas of participation related to the tribes.

Finally, we concur that it would be unrealistic to expect a reissuance of the EIS before 1997. The processes required to structure the Corps' program into a feasible approach which properly addresses your trust responsibilities as well as compliance with Federal Congressional and Executive mandates

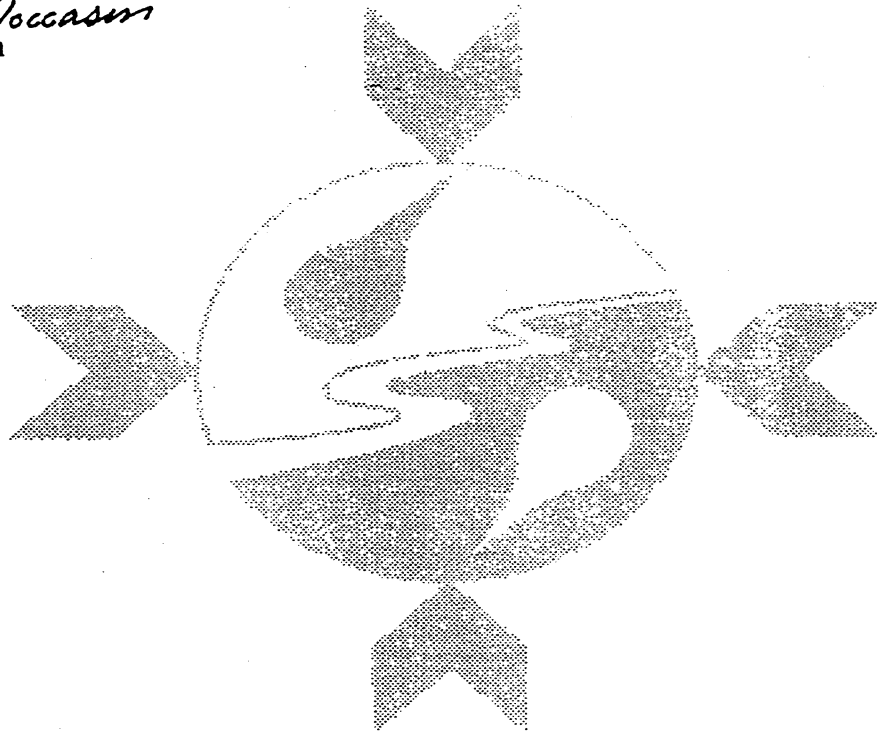
Colonel Michael F. Thuss
Division Engineer
U.S. Army Corps of Engineers
June 27, 1995
Page 6

will require much of the rest of this year. We appreciate your efforts to accommodate the various interests in the basin. We pledge to work with you to achieve a reasonable solution to these issues. We are very willing to meet with you and will be in contact with your Executive Assistant to arrange for a meeting between you and our tribal leaders.

Sincerely,

Richard Bad Moccasin
Richard Bad Moccasin
Executive Director

RBM/jpw
enc.



ATTACHMENT A

Government-to-Government Relations With Native American Tribal Governments

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal government as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognize Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognize tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognize tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, project programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 1287 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureau and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William Clinton

A1-333

ATTACHMENT B

Executive Summary

Preliminary Recommendations Regarding the Future Direction of the Missouri River Master Manual Review and Update and Collaborative Process

The following are preliminary recommendations regarding the future direction of the Missouri River Master Manual Review and Update:

- The intrasystem regulation modification question should be studied and resolved through the existing Annual Operating Plan (AOP) process. This change would not affect system release and therefore would not significantly impact the downstream states. In the AOP process, participants could suggest intrasystem modification alternatives for study.
- A number of areas need further study or modification. These are:
 - Interior drainage impacts to lands behind levees
 - Groundwater impacts to lands behind levees
 - Missouri River navigation
 - Mississippi River navigation
 - Missouri River native river fish
 - Indian Water Rights**
 - Cultural Concerns**
 - Tribal Economic Impacts**
- We will re-evaluate the alternatives presented in the Draft EIS for the Missouri River Master Water Control Manual Review and Update to address the public comments. It is envisioned that revised alternatives will be developed and a Revised Draft EIS (RDEIS) issued.
- The RDEIS would accommodate a public comment period. We will not move to finalize any alternative without an additional public comment period. The RDEIS should be available for public comment in early 1997.
- The RDEIS will address issues such as floods, navigation, minimum pool elevations, and wildlife.
- A collaborative process will be used to work with the other Federal Agencies, the states, and the Tribes to help develop revised alternatives.
- If a drought occurs before a new Master Manual can be finalized, the Governors of the basin states and Tribal Chairmen will be called to negotiate one-year changes to the operation of the reservoirs to equitably share hardships created by water shortages. Intense negotiations will begin when system water shortage reaches 44 million acre-feet.

- We will evaluate if means other than a spring rise can be used to protect fish and wildlife, such as habitat restoration.

There are a number of related non-operational issues that cannot be resolved by the Master Manual itself. Some of these non-operational issues should be addressed in conjunction with the review and update of the Master Manual. Therefore, the proposed collaborative process would address both the operational issues (Master Manual) and non-operational issues. A collaborative effort would accommodate input from the states, Tribes, Federal agencies, economic and environmental interest groups, and the general public. Some of the issues raised through the collaborative process may be outside of Corps authority or interest to pursue. Participants in this process would be asked to provide resources to include both in-kind services and cash to support resolution of the issues of interest to them. Studies required to address operational issues for the review and update of the Master Manual would continue to be funded by the Corps.

The collaborative process could address the following issues in addition to the operational Master Manual issues:

- Recreation Industry Development
- Ecosystem Management & Restoration
- Streambank Erosion
- Structural Changes for Endangered Species
- Environmental Monitoring
- Support to Navigation and Agriculture

The organizational structure for the collaborative process could be as follows:

- Management Oversight
 - States
 - Tribes
 - U.S. Army Corps of Engineers
- Technical Committees
 - Other Federal Agencies
 - State Agencies
 - Local Agencies
 - Tribal Agencies
- Funding
 - U.S. Army Corps of Engineers
 - Other Federal Agencies
 - States (cash and in-kind)
 - Tribes
 - Interest Groups

- Public Participation
 - Economic Groups
 - Environmental Groups
 - General Public
- Management/Facilitation
 - U.S. Army Corps of Engineers

Public participation could be facilitated through public workshops. These public workshops could be held for two purposes:

- 1) To allow input on the Master Manual Review and Update
- 2) To allow input regarding non-operational issues

The public workshops could be co-sponsored by the collaborative process participants.

In summary, the preliminary draft recommendation is to:

- Address the intrasystem regulation modification question through the existing Annual Operating Plan (AOP) process.
- Set up a collaborative water resources planning/partnering process with other Federal agencies, the states and the Tribes to address both operational (Master Manual) and non-operational issues.
- Hold public workshops to allow input into the collaborative process.
- Revise and expand studies regarding interior drainage and groundwater behind levees, Missouri and Mississippi River navigation, Missouri River native fish for the Master Manual Review and Update.
- Re-evaluate alternatives after completion of additional studies in collaboration with other Federal agencies, the states, and the Tribes.
- Publish RDEIS.
- Hold additional public hearings on the RDEIS.
- Set up a process by which the basin Governors and Indian Tribes can negotiate one-year changes to the operation of the reservoirs if a drought occurs before a new Master Manual can be finalized.

Executive Director:
Richard Bad Moccasin

Member Tribes:
Assiniboine & Sioux Tribes of
Fort Peck, Poplar, Montana

Cheyenne River Sioux Tribe,
Eagle Butte, South Dakota

Chippewa Cree Tribe,
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe,
Fort Thompson, South Dakota

Devil's Lake Sioux Tribe,
Fort Totten, North Dakota

Fort Belknap Tribe,
Harlem, Montana

Kickapoo Tribe of Kansas,
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Lower Brule Sioux Tribe,
Lower Brule, South Dakota

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Omaha Tribe,
Walthill, Nebraska

Ponca Tribe of Nebraska,
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Rosebud, South Dakota

Sac & Fox of Missouri,
Reserve, Kansas

Santee Sioux Tribe,
Niobrara, Nebraska

Sisseton-Wahpeton Dakota
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Standing Rock Sioux Tribe,
Fort Yates, North Dakota

Three Affiliated Tribes,
New Town, North Dakota

Turtle Mountain Band of
Chippewas, North Dakota

Winnebago Tribe of Nebraska
Winnebago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni-Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

July 13, 1995

Colonel Michael F. Thuss
Division Engineer
U.S. Army Corps of Engineers
12565 West Center Road
Omaha, NE 68144-3869

Dear Colonel Thuss:

The Mni Sose Intertribal Water Rights Coalition has thoroughly reviewed the "preliminary recommendations regarding the future direction of the Missouri River Master Manual Review and Update and collaborative process" as described in your letter of June 5, 1995 to our Executive Director, Mr. Richard Bad Moccasin. Please refer to Mr. Bad Moccasin's letter of June 27, 1995, for a more detailed response to your preliminary recommendations.

The Coalition has deep concerns with deficiencies in the current version of the DEIS which include, but are not limited to, the following which have been identified in earlier correspondence:

- Treatment of vested water rights of the Missouri River basin Indian Tribes;
- Treatment of cultural, historical, spiritual, and related tribal interests;
- Display of the economic impact on Tribes, as separate from the state;
- Display of other environmental impacts on Tribes;
- Impact on hydropower values in which Western concurs.

Let me emphasize that the Tribes of the Coalition do not constitute a special interest group. Rather, the Tribes are the beneficiaries of a trust relationship with the United States. The Trustee must exercise the highest degree of care, skill, and diligence to ensure that water rights and other assets and interests of the Indian Tribes are not diminished by the actions of the United State or its agents. Moreover, the actions of the United States cannot adversely impact upon the economy, health, or welfare of the Tribes.

As beneficiaries of the trust relationship with the United States, the Tribes seek direct participation and direct funding for the following elements of any final collaborative process

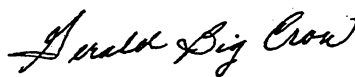
- Management oversight;
- Technical committees.

We cannot possibly understand what the collaborative process may contemplate, but please be assured that any collaborative process involving treatment of our water rights must be limited to representatives of the Tribes and the United States.

Because the DEIS has not properly addressed our rights, titles, interests, economy, or welfare and because there is no evidence that at the conclusion of any additional two years of effort there will be proper treatment, we respectfully submit that Congressional hearings would greatly assist in establishing a better direction than the Corps can achieve on its own. We will seek hearings on the future direction of the Corps' investigations.

As you work with the Governors in an attempt to achieve consensus on the direction of the RDEIS I anticipate that you will ensure a level of input from Tribes that reflects our special relationship with the United States and that you will keep up fully informed respecting progress among the Governors.

Sincerely,



Gerald Big Crow *sc*
President of the Board

Executive Director:
Richard Bad Moccasins

Member Tribes:
Seminole & Sioux Tribes of
Fort Peck, Poplar, Montana

Cheyenne River Sioux Tribe,
Spearhead, South Dakota

Chippewa Cree Tribe,
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe,
Fort Thompson, South Dakota

Devil's Lake Sioux Tribe,
Fort Totten, North Dakota

Flandreau Santee Sioux Tribe
Flandreau, South Dakota

Fort Belknap Tribe,
Harlem, Montana

Kickapoo Tribe of Kansas,
Horton, Kansas

Lower Brule Sioux Tribe,
Lower Brule, South Dakota

Northern Cheyenne Tribe,
Lame Deer, Montana

Ogala Sioux Tribe,
Pine Ridge, South Dakota

Omaha Tribe,
Walthill, Nebraska

Ponca Tribe of Nebraska,
Niobrara, Nebraska

Prairie Band of Potawatomi,
Mayetta, Kansas

Rosebud Sioux Tribe,
Rosebud, South Dakota

Sac & Fox of Missouri,
Reserve, Kansas

Santee Sioux Tribe,
Niobrara, Nebraska

Sisseton-Wahpeton Dakota
Nation, South Dakota

Standing Rock Sioux Tribe,
Fort Yates, North Dakota

Three Affiliated Tribes,
New Town, North Dakota

Turtle Mountain Band of
Chippewas, North Dakota

Winnebago Tribe of Nebraska
Winnebago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni-Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

November 17, 1995

Colonel Richard Craig, Division Commander
Department of the Army
Corps of Engineers
Missouri River Division
12565 West Center Road
Omaha, NE 68144-3869

RE: Master Manual Revision

Dear Colonel Craig:

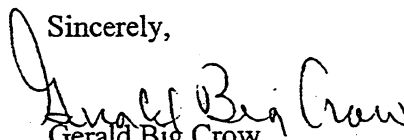
Thank you for meeting with Richard Bad Moccasins on October 18. As President of the Board of Directors of the Mni Sose Intertribal Water Rights Coalition, let me also welcome you to the Missouri River Basin. Richard reported to the Board at its October 25 meeting that the introduction and preliminary discussion of the tribal issues went very well. I appreciate your attention to the concerns of the Indian Tribes.

The Mni Sose Board also discussed the status of the Master Manual Revision process. We remain concerned that the impacts of Missouri River operations on native cultural resources are not receiving adequate study by the Corps. In addition, we believe that the various alternatives under consideration for system operations should be reassessed, in light of the potential for depletion by the Tribes of our substantial water rights under the Winters doctrine.

The Tribes have urged the Corps to perform additional studies on these issues, prior to the release of the revised DEIS. However, the Corps has been unresponsive to our request.

The Board of Directors of the Mni Sose Coalition, along with our staff, would like to meet with you to discuss this issue, as a follow-up to your meeting with Richard. We remain willing to meet with you at your convenience, in the near future. I look forward to meeting and discussing these issues with you.

Sincerely,


Gerald Big Crow
President

Executive Director:
Richard Bad Moccasin

Member Tribes:

Nebraska & Sioux Tribes of
Fort Peck, Poplar, Montana

Cheyenne River Sioux Tribe,
Eagle Butte, South Dakota

Chippewa Cree Tribe,
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

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Winnebago Tribe of Nebraska
Winnebago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni-Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

December 7, 1995

Lieutenant Colonel Stephen C. Nash, P.E.
Assistant Director of Civil Works
North Central Region
U.S. Army Corps of Engineers
20 Massachusetts Avenue NW Room 7233
Washington, DC 20314-1000

RE: Indian Tribal Concerns on COE Activities in the Missouri River Basin

Dear Colonel Nash:

Thank you for meeting with me on November 29. I briefly summarized the various issues of concern to the Mni Sose Intertribal Water Rights Coalition, and stated that I would follow up with correspondence on our concerns. I am writing to further articulate Mni Sose's concerns with: 1) Corps of Engineers' Missouri River Master Water Control Manual DEIS; 2) Lack of implementation by the COE of federal trust obligations to the Tribes; 3) Lack of adequate consultation with Tribes; and 4) COE project lands on the reservations along the Missouri River.

Missouri River Master Water Control Manual DEIS

1. De-coupling of Tribal Issues from Areas Identified for Further Study in EIS

Mni Sose seeks revisions in the current scheme for the Missouri River Master Water Control Manual revision process. We oppose the attempt to address tribal issues in the "collaborative process," among the states. Although the Corps identifies "tribal issues" as an issue that has arisen in the Master Manual Review and Update, the Corps does not commit to undertaking additional studies of the impacts of the preferred alternative on native cultural and environmental resources.

As described in more detail in Mni Sose's comments on the DEIS, the Corps should work with the Tribes in developing a comprehensive mitigation strategy to protect native cultural resources. Instead, the Corps proposes to undertake additional studies on the impacts of the preferred alternative on downstream navigation and flooding, and other issues that have little bearing on our concerns. These issues are clearly of far less national importance than the tribal treaty rights and native cultural and environmental resource issues that we have raised.

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December 7, 1995

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The Corps intends to undertake additional studies on these issues, while relegating the tribal issues of concern to the "collaborative process." This is inadequate. The Corps should instead undertake comprehensive studies of tribal water rights and environmental and cultural resources concerns of the Tribes.

The Corps has identified several areas for further study or modification. Presumably, these modifications shall be incorporated in the operational alternatives. Indian water rights and the protection of native cultural and environmental resources are operational issues, yet they are not receiving consideration by the Corps for further study. The Corps should immediately enter into a partnership with the Tribes to provide further study to these issues within the format of a revised DEIS.

Instead, at this point, the Corps proposes to include the Tribes' legal and property rights on an agenda for political discussion with the states. This is completely unacceptable since the states represent our competing water users.

2. The Missouri River DEIS Contains No Recognition of Indian Water Rights

Mni Sose still has received no indication that the Corps of Engineers has considered our comments regarding the inaccurate treatment of water rights in the PDEIS and the DEIS. Any additional studies or consultations by the Corps should include revision on the treatment of Indian water rights so a revised Master Manual contains at least accurate information on the nature and scope of Indian reserved water rights. Moreover, the operational alternatives should be revised so as to contemplate both the consumptive and non-consumptive tribal uses of our water including instream flows.

In the final EIS, the Corps should explain the existence of Indian water rights as follows:

The Indian Tribes possess water rights to all of the water that is reasonably needed to fulfill the purposes for which the Indian reservations were established. It is well accepted that the reservations were established to provide permanent homelands for the Indian Tribes. However, the precise amount of water to which most of the Tribes in the Missouri River Basin are entitled remains undefined.

Nevertheless, the legal principles underlying Indian reserved water rights indicate that when the amount of water to which the Tribes in the basin are entitled does not get formally defined, the Tribes obtain court decrees or negotiated settlements for substantial amounts of water for consumptive and other water uses. The Mni Sose Intertribal Water Rights Coalition has stated to the COE that these amounts total tens of millions of acre-feet of water. The COE recognizes the right of the Tribes to exercise their reserved water rights, and that as they do so, COE operations may have to be modified accordingly.

3. Other Concerns with the De-coupling of "Operational Issues" for Further Study from "Non-operational Issues" to be Addressed by the States

The de-coupling of tribal issues from the final EIS violates President Clinton's Memorandum to all executive agencies entitled "Government-to-Government Relations with Native American Tribal Governments." (April 29, 1994) Subsection (c) of the Memorandum provides that "Each executive department and agency shall assess the impact of federal government plans, projects, programs, and activities on tribal trust resources, and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities."

The DEIS contains inaccurate statements about the existence and status of Indian reserved water rights. The DEIS contains no explanation of how the preferred alternative affects Indian water rights. The Corps treats Indian water rights and the protection of our cultural resources as non-operational issues. The Executive Order requires the Corps to "assess the impact" of government projects on our resources, and to "assure that tribal government rights and concerns are considered." Both the DEIS and the proposal for the collaborative process violate the President's Memorandum.

Moreover, by proposing to de-couple the operational issues from what are characterized as non-operational issues, the Corps shall be violating the requirements of the National Environmental Policy Act (NEPA). NEPA requires the Corps to complete a "detailed statement" on "environmental impact," "alternatives to the proposed action" and the relevant resources associated with the proposed action. NEPA § 102, 42 U.S.C. § 4332. This includes an assessment of "possible conflicts between the proposed action and the objectives of (tribal) land use plans (and) policies," and an assessment of the impacts on "historic and cultural resources." 40 CFR § 1502.16(f) and (g). In fact, NEPA identifies as a national policy the preservation of "historic, cultural, and natural aspects of our national heritage." NEPA § 101, 42 U.S.C. § 4331(b).

The statute also mandates an "interdisciplinary approach" to the study. *Id.* at § 102, § 4332(A). The interdisciplinary approach is to insure the integrated use of natural and social sciences and environmental planning, in the study itself. Conservation Council of North Carolina V. Froehlke, 341 F. Supp. 222 (D.C. N.C. 1972).

The lead agency is to accomplish this comprehensive study by defining the purpose and need for the proposed action in an adequately broad manner. 40 CFR § 1502.13. "The agency may not define the objectives of its action in terms so unreasonably narrow that... (the result of) the EIS is a foreordained formality." Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991). Further, "the agency should always take into account the needs and goals of the parties involved." *Id.* at 196 (emphasis added).

The Corps cannot de-couple what it characterizes as operational issues from what it characterizes as non-operational issues and proceed with a final EIS on "operational issues" and undertake a separate "collaborative process" on the "non-operational" issues. It must "take into account" all

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issues, including Indian water rights and cultural and environmental resource concerns, in assessing the alternatives in the EIS. The federal courts mandate this approach.

In addition, the Corps "should always consider the views of Congress... in other congressional directives." Citizens Against Burlington, Inc. V. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991). In numerous enactments, the Congress has expressed the federal policy of Indian sovereignty and Self Determination. *See e.g.* Indian Self Determination and Education Assistance Act of 1973, P.L. 93-638. Congress has also specifically expressed the federal policy to preserve and protect Indian reserved water rights (Water Resources Development Act of 1992, P.L. 102-675), and Native American Cultural Resources (Native American Graves Protection and Repatriation Act, P.L. 101-601).

Accordingly, federal law prohibits the Corps of Engineers from separating the tribal water rights and cultural and environmental resource concerns, from the alternatives that are assessed in the final EIS. These issues **must** be included in the areas identified for "further study or modification."

Lack of Implementation by COE of Federal Trust Obligations to the Tribes

The Corps of Engineers has long ignored, and continues to ignore, its trust obligation to the Indian Tribes. The trust obligation assumed by the United States is similar to that of an ordinary trustee to a trust beneficiary. Seminole Nation v. United States, 326 U.S. 286 (1942). It is a fiduciary obligation, requiring the United States to assist with the preservation of tribal resources and the exercise of self determination.

"Since the trust obligations are binding on the United States, these standards of conduct would seem to govern all executive departments that may deal with Indians," including the Corps of Engineers. F. Cohen, Handbook of Federal Indian Law, 225 (1982 ed.). In fact, the Missouri River Master Water Control Manual DEIS is precisely the type of situation where the fiduciary principles strictly apply:

Application of a duty of loyalty to administrative officials in their dealing with Indians is of particular importance because conflicts of interests between Indian claims to natural resources and the programs and policies of agencies not directly responsible for Indian affairs frequently impede the faithful discharge of trust obligations to Indian by federal officials. **Indian Tribes have claims... to water which is coveted for non-Indian water, power, and flood control projects by the Corps of Engineers... Non-Indians are more numerous and usually politically more powerful, so substantial political pressure can frequently be applied on executive officials to compromise or ignore Indian rights.**

F. Cohen, at 227-228 (emphasis added).

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Mni Sose maintains that this is precisely what is occurring in the Missouri River basin. In the DEIS, the Corps has clearly responded to the economics of hydropower, upstream recreation, and to environmental values. In selecting to study downstream navigation and flood control, the Corps has responded to the concerns of lower basin navigation and farming concerns. Yet the Corps completely ignores Indian water rights, tribal sovereignty, and culturally significant areas of concern to Indians, notwithstanding its affirmative trust obligations to work with us in these areas.

Consultation With Tribes

There should be high-level consultation between the Department of the Army and Tribes, involving meetings with individual tribal governments. The Corps of Engineers should solicit information on the Tribe's water development infrastructure needs and cultural resources in the Missouri River basin. In addition, there should be public meetings on the reservations regarding the DEIS. None of this has occurred with the Tribes. Yet the Corps provides this high level of consultation with the state governments.

The President's Memorandum recognizes the "unique legal relationship with Native American tribal governments..." It provides in relevant part that "Each executive department and agency **shall** consult... with tribal governments prior to taking actions that affect federally-recognized tribal governments." (emphasis added).

Moreover, the Corps has committed itself to high-level consultation with the Tribes. On September 30, 1993, at the Missouri River Master Manual PDEIS conference in Omaha, Colonel Schaufelberger agreed with the Tribes that both substantively and procedurally, the COE failed to adequately include tribal rights in the PDEIS. He committed to making the changes needed in the DEIS. Yet no changes have been made. The Corps did not honor Colonel Schaufelberger's word. Consequently, no further actions should be taken on a revised DEIS for Missouri River operations until there is meaningful consultation with the basin's Indian Tribes.

COE Project Lands on Indian Reservations Along the Missouri River

On April 10, 1995, the Corps of Engineers published in the Federal Register its Proposed Rule establishing criteria for the excessing of project lands on the Standing Rock Sioux and Fort Berthold Indian Reservations. Mni Sose wholeheartedly supports the excessing of Corps project land under the Proposed Rule. Both the Standing Rock Sioux Tribes and the Three Affiliated Tribes of Fort Berthold belong to the Mni Sose Coalition. We support the efforts of the Tribe for full implementation of the findings of the Joint Tribal Advisory Committee (JTAC).

In addition, other member Tribes have Corps project lands on their reservations and suffer many of the same problems with the existence of these lands as Standing Rock and Fort Berthold. These

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Tribes included: the Yankton Sioux, my Tribe the Crow Creek Sioux, the Lower Brule Sioux, and the Cheyenne River Sioux. The Tribes face the same jurisdictional conflicts with the state of South Dakota, and impediments to its development resulting from our river front lands being in the hands of the Corps of Engineers. Trust responsibilities, equitable considerations, sound management criteria, and the congressionally-endorsed principle of Indian Self Determination mandate that the Corps transfer all project lands in Indian country back to the Tribes.

Conclusion

The COE should not proceed with a revised DEIS, absent modification in its plans which address the above concerns. The Corps should undertake high-level consultation with the Indian Nations of the Missouri River basin. The Corps should work with the Tribes on water development and cultural resource planning.

In this manner, the Corps may incorporate tribal water rights and cultural resources into a revised DEIS. By undertaking this process, the Corps shall be consulting with the Tribes in a manner consistent with the status of the Tribes as sovereign nations. By consulting with the Tribes, the Corps also will learn about the cultural resources and socioeconomic conditions on the reservations; information that should certainly be contained in the DEIS.

In light of its trust responsibility to the Tribes, the Corps should completely reconsider its relationship with the Indian Nations. One natural consequence of this process will be the transfer of COE land to the Tribes whose reservations include Corps project lands. Moreover, as the Corps undertakes its computer modeling on Missouri River operations and evaluates the various project functions, the Corps of Engineers, as trustee to the Tribes, should work to ensure that the Indian Nations in the Missouri River basin share in the economic benefits for which we contribute so much.

Sincerely,



Richard Bad Moccasin
Executive Director

Tribal Correspondence 1996



Executive Director:
Richard Bad Moccasin

Member Tribes:
Arapaho & Sioux Tribes of
Fort Peck, Poplar, Montana

Cheyenne River Sioux Tribe,
Eagle Butte, South Dakota

Chippewa Cree Tribe,
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe,
Fort Thompson, South Dakota

Devil's Lake Sioux Tribe,
Fort Totten, North Dakota

Flandreau Santee Sioux Tribe
Flandreau, South Dakota

Fort Belknap Tribe,
Harlem, Montana

Kickapoo Tribe of Kansas,
Horton, Kansas

Lower Brule Sioux Tribe,
Lower Brule, South Dakota

Northern Cheyenne Tribe,
Lame Deer, Montana

Yankton Sioux Tribe,
Sisseton, South Dakota

Omaha Tribe,
Walthill, Nebraska

Ponca Tribe of Nebraska,
Niobrara, Nebraska

Prairie Band of Potawatomi,
Mayetta, Kansas

Rosebud Sioux Tribe,
Rosebud, South Dakota

Sac & Fox of Missouri,
Reserve, Kansas

Santee Sioux Tribe,
Niobrara, Nebraska

Sisseton-Wahpeton Dakota
Nation, South Dakota

Standing Rock Sioux Tribe,
Fort Yates, North Dakota

Three Affiliated Tribes,
New Town, North Dakota

Turtle Mountain Band of
Chippewas, North Dakota

Winnnebago Tribe of Nebraska
Winnnebago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni-Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

April 1, 1996

H. Martin Lancaster
Assistant Secretary of the Army for Civil Works
108 Army Pentagon
Washington, DC 20310-0108

RE: Indian Tribal Concerns on COE Activities in the Missouri River Basin

Dear Mr. Lancaster:

Thank you for meeting with me on March 25. I briefly summarized the various issues of concern to the Mni Sose Intertribal Water Rights Coalition, and stated that I would follow up with correspondence on our concerns. I am writing to further articulate Mni Sose's concerns with: 1) Corps of Engineers' Missouri River Master Water Control Manual DEIS; 2) Lack of implementation by the COE of federal trust obligations to the Tribes; 3) Lack of adequate consultation with Tribes; and 4) COE project lands on the reservations along the Missouri River.

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Letter to H. Martin Lancaster
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Indian Reservations. Mni Sose wholeheartedly supports the excessing of Corps project land under the Proposed Rule. Both the Standing Rock Sioux Tribes and the Three Affiliated Tribes of Fort Berthold belong to the Mni Sose Coalition. We support the efforts of the Tribe for full implementation of the findings of the Joint Tribal Advisory Committee (JTAC).

In addition, other member Tribes have Corps project lands on their reservations and suffer many of the same problems with the existence of these lands as Standing Rock and Fort Berthold. These Tribes included: the Yankton Sioux, my Tribe the Crow Creek Sioux, the Lower Brule Sioux, and the Cheyenne River Sioux. The Tribes face the same jurisdictional conflicts with the state of South Dakota, and impediments to its development resulting from our river front lands being in the hands of the Corps of Engineers. Trust responsibilities, equitable considerations, sound management criteria, and the congressionally-endorsed principle of Indian Self Determination mandate that the Corps transfer all project lands in Indian country back to the Tribes.

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Sincerely,

Richard Bad Moccasin
Richard Bad Moccasin
Executive Director

Tribal Correspondence 1998



Executive Director:
Richard Bad Moccasin

Member Tribes:
Arapaho & Sioux Tribes of Fort
Bark, Poplar, Montana

Cheyenne River Sioux Tribe
Eagle Butte, South Dakota

Chippewa Cree Tribe
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe
Fort Thompson, South Dakota

Eastern Shoshone Tribe
Fort Washakie, Wyoming

Flandreau Santee Sioux Tribe
Flandreau, South Dakota

Fort Belknap Tribe
Harlem, Montana

Kickapoo Tribe in Kansas
Horton, Kansas

Lower Brule Sioux Tribe
Lower Brule, South Dakota

Northern Arapaho Tribe
Fort Washakie, Wyoming

Northern Cheyenne Tribe
Lame Deer, Montana

Oglala Sioux Tribe
Pine Ridge, South Dakota

Omaha Tribe
Walthill, Nebraska

Ponca Tribe of Nebraska
Sionara, Nebraska

Prairie Band of Potawatomi
Mavetta, Kansas

Rosebud Sioux Tribe
Rosebud, South Dakota

Sac & Fox Nation of Missouri
Reserve, Kansas

Santee Sioux Tribe
Sionara, Nebraska

Sisseton-Wahpeton Sioux Tribe
Agency Village, South Dakota

Spirit Lake Tribe
Fort Totten, North Dakota

Standing Rock Sioux Tribe
Fort Yates, North Dakota

Three Affiliated Tribes
New Town, North Dakota

Turtle Mt. Band of Chippewa
Belcourt, North Dakota

Winnehago Tribe of Nebraska
Winnehago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni Sose Intertribal Water Rights Coalition, Inc.
P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

June 5, 1998

MEMORANDUM

TO: Mni Sose Tribal Delegates
Federal and State Government Representatives
Missouri River Basin Tribal Representatives

FROM: Richard Bad Moccasin, Executive Director

SUBJECT: Master Manual Review and Update Coordination Meeting Minutes

Enclosed please find the meeting minutes from the Master Manual Review and Update session with the Army Corps of Engineers and Missouri River Basin Tribes held in Rapid City, South Dakota on May 14, 1998.

We will promptly notify you of the next Master Manual Review and Update Coordination meeting when it is announced.

A1-357

Master Manual Review and Update Coordination Meeting Minutes
Missouri River Basin Tribes & U.S. Army Corps of Engineers
Howard Johnson, Sylvan II Room
Rapid City, South Dakota
May 14, 1998

The meeting was called to order at approximately 9:30 AM MST by Richard Bad Moccasin, Executive Director of Mni Sose. Ben Black Bear from the Rosebud Sioux Tribe gave the invocation and Sandra Keith of the Cheyenne River Sioux Tribe sang an Honor Song.

Col. John Craig, Deputy Commander for the Omaha District Corps of Engineers, provided opening remarks and introduced his staff from the Army Corps of Engineers: Larry Cieslik, Reservoir Control Chief; Rose Hargrave, Master Manual Project Manager; David Vader, Native American Coordinator; Peg O'Bryan, Native American Coordinator. One of the purposes of this meeting was for the Army Corps to coordinate tribal input into the Missouri River Master Water Control Plan. Col. Craig stated that the Army Corps intends to present 8 alternatives in the Preliminary Revised Draft Environmental Impact Statement (PRDEIS), and the preferred alternative will be included in the final EIS. The Army Corps also recognizes its responsibilities to protect Native American sites and cultural resources through the National Historical Preservation Act & NAGPRA.

Rose Hargrave presented the schedule for the Missouri River Master Manual

Release of Approved Schedule	May 1998
Release of PRDEIS (with multiple alternatives)	Aug - Sept 1998
PRDEIS Coordination Period	Aug 1998 - Jan 1999
Selection of Preferred Alternative	April - May 1999
Release of Revised Draft EIS (with preferred alternative)	Oct - Nov 1999
RDEIS Comment Period	Oct 1999 - March 2000
Final EIS	December 2000
Washington-level review	May 2001
Record of Decision (ROD)	July 2001
Revise Master Manual	July 2001
Develop Annual Operating Plan	December 2001
Implement Selected Plan	March 2002

Alternatives to be presented in PRDEIS - released in August 1998:

- ▶ Current Water Control Plan
- ▶ 3 Alternatives that vary Permanent Pool & Conservation during drought
- ▶ 3 Alternatives that provide additional Fish & Wildlife benefits
- ▶ Mississippi River Target (target flows at St. Louis)

The Missouri River Basin Association (MRBA) has developed recommendations and submitted them to the Army Corps. This MRBA Consensus Process involved:

- ▶ Basin-wide issues identification conference in June 1996 for interested state and Federal agencies and the general public
- ▶ MRBA workgroup developed action items to address issues
- ▶ MRBA submitted to the Army Corps its draft planning recommendations

The Army Corps of Engineers' participation with the MRBA has been in the form of facilitation and technical assistance.

Future Action of the Army Corps with MRBA and other federal agencies

- ▶ MRBA planning recommendation submitted to Corps on April 1, 1998
- ▶ Staff recommendations with District and Regional Corps offices
- ▶ Respond to MRBA

Maximizing Tribal Input - David Vader & Peg O'Bryan

In February 1998, the Army Corps came out with their Tribal Policy Principles covering:

- ▶ tribal sovereignty
- ▶ trust responsibility
- ▶ government-to-government relations
- ▶ pre-decisional and honest consultation
- ▶ self-reliance, capacity building and growth
- ▶ natural and cultural resources

During this presentation, several important comments were made:

- ▶ Tribal workshops and meetings with the Army Corps are flexible and aimed at tribal needs
- ▶ For tribal comments and concerns to be included in the Master Manual, Mni Sose should put together a compendium of tribal issues written by the Missouri River Basin Tribes
- ▶ Meetings with the Army Corps need to be accessible to grassroots people
- ▶ The consultation process is not defined; however, the NEPA process is defined
- ▶ The Army Corps Deputy Commander will send a letter to the tribal councils of the Missouri River Basin on the consultation process
- ▶ With funding from the Army Corps, Mni Sose should assist with tribal workshops and meetings

Native American Graves Protection and Repatriation Act (NAGPRA), Cultural Resources - Tim Mentz, Tribal Historic Preservation Office, Standing Rock Sioux Tribe

Tim made several observations and requests of the Army Corps:

- ▶ Create government-to-government relationships with Tribes
- ▶ Fully examine how tribal relatives are affected by the management of the Missouri River
- ▶ Look at how laws are applied to Tribes
- ▶ Review existing agreements with Tribes and develop cohesive agreements with Tribes in the Army Corps' Omaha District
- ▶ Address inadvertent discoveries in the Master Manual and what are the safeguards
- ▶ Implement the National Historic Preservation Act and NAGPRA
- ▶ Current review of the Army Corps cultural resources management plan for Tribes
- ▶ Divulge process of dealing with tribal cultural resources

- ▶ How is the Army Corps bringing in tribal consultation in Section 106
- ▶ Use of checks and balances - intentional excavation
- ▶ Could there be co-management of the Missouri River

Comments made during the open discussion included:

- ▶ The comment period on the PRDEIS will extend to January 1999 when the PRDEIS is released in August 1998
- ▶ The Army Corps is not solely relying on comments from the MRBA but is seeking comments from everyone
- ▶ Decision making will be from the Record of Decision (ROD) - Assistant Secretary
- ▶ EPA's role is to review all EIS's
- ▶ Scott Jones from the Lower Brule Sioux Tribe distributed a draft letter to Col. Robert E. Volz, Commander and District Engineer from the Army Corps' Omaha District on the failure of the Army Corps to put into action the programmatic agreement regarding the effects of operation and management of the six Missouri River Mainstem Reservoirs as integrated components of the basin-wide comprehensive Missouri Basin Plan

In conclusion, Col. Craig committed to consultation with each Tribe and encouraged them to keep all lines of communication open with the Army Corps of Engineers.

Sign-in Sheet
Mni Sose Master Manual Review Meeting

May 13, 1999

Name	Mailing Address	Phone & Fax Numbers	E-mail Address
Tom Kravcezy	Box 1027 Dyplun, MT 59255	406-768-5155 X323 406-768-5606	
Edgar Bean Runne	P.O. Box 282 Porcupine, SD	605 867-1507 605 867-(5624) work	
Rick Gray buffalo	321 Doolittle St RC SD	605-345-0125	
Roberta Crozy Thuder	321 Doolittle RC SD	'' ''	
JAMES Spotted Elk			
Gary Collins	FT. Washburn, Wyo	307/332-3162	
KIMBERLY OLDHAM	U.S. Army Corps of Engineers Kansas City District 601 E. 12th Street K.C., MO 64106-2896	PH. - (816) 983-3568 FAX - (816) 426-5550	KIMBERLY.C.OLDHAM@ USACE.ARMY.MIL
Peg O'Bryan	ACOE Northwestern Division 12565 W. Center Rd Omaha NE 68144 ATTN: CENWID-MR-ET-C	PH 402/697-2537 FAX 402/697-2538	Peggy.A.OBryan@ USACE.ARMY.MIL
Chuck Hillerson	ACOE Northwestern Division 12565 W. Center Rd Omaha NE - 68144	PH 402/697/2474	
Jim Stone	Box 249 Morka SD 57361 Yankton Sioux Tribe	P 605-384-3641 F 605-384-5687	

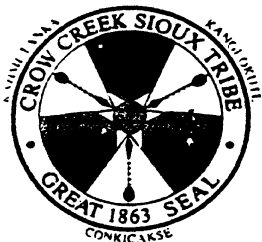
Sign-in Sheet
Mni Sose Master Manual Review Meeting

May 13, 1999

Name	Mailing Address	Phone & Fax Numbers	E-mail Address
Rose Hargrave	COE 12565 West Center Road Omaha, NE 68144	P(402) 697-2507 F(402) 697 -2504	rosemary.c.hargrave @usace.army.mil

Tribal Correspondence 1999





CROW CREEK SIOUX TRIBE

FORT THOMPSON, SOUTH DAKOTA 57339

February 17, 1999

TRIBAL COUNCIL

Harold D. Miller Sr.
Chairman

Norman Thompson Sr.
Vice-Chairman

Tina Grey Owl
Secretary

Ronald Kirkie Sr.
Treasurer

Randy Shields Sr.
Councilmember

Donald McGhee
Councilmember

Loren Fallis Sr.
Councilmember

Brigadier General Robert H. Griffin
Division Engineer
U.S. Department of the Army
Northwestern Division Corps of Engineers
12565 West Center Road
Omaha, Nebraska 68144-3869

Dear General Griffin:

Thank you for your letter dated December 17, 1998. As I understand, the meeting to discuss the Missouri River Master Water Control Manual has been confirmed for February 23-24 in Rapid City. I am designating Tribal Council Representative and Mni Sose delegate Donald McGhee, and attorney Peter Capossela, as my representatives for this meeting.

We are very concerned with the conduct of the Corps of Engineers in the Master Manual Review process. The water rights and cultural resources issues getting raised by the Tribes continue to be subordinated to the concerns of the navigation industry and to wildlife. The drafters of the NEPA documents continue to ignore the suffering of our Tribal membership at Crow Creek, so the Fort Randall and Big Bend dams could be built. These are the issues which I shall instruct my delegates to raise with you during the upcoming consultation meeting.

I sincerely hope that the Corps of Engineers changes its way of doing business, and seriously listens and responds to the concerns of the Tribal leadership. I look forward to the upcoming meeting as a step in that direction.

Sincerely,

Harold Miller Sr.
Tribal Chairman

Re-organization of tribal comments from Rapid City, SD consultation, February 23-24, 1999 into *Tribal Issues and Impacts* groupings.

I. Consultation

A. Consultation between Tribes and Federal Agencies

Mni Sose

- We feel it is impossible to incorporate tribal input by October 1999. There just isn't enough time.
- We want to continue to be involved with the Master Manual.
- Tribes must be involved in the consultation process. Often it is said we met with the Indians and got their consent and that is just not true.
- Certain tribes aren't represented by groups and are never consulted.
- The MRBA shouldn't be looked to for answers.
- All tribes have their own idea of consultation.
- Consent vs. Consultation. We are being consulted.

Lower Brule

- Certain tribes are not represented by groups, and these groups do not speak for certain tribes.
- Water means different things to different tribes. Corps needs to deal with tribes individually to handle the different agendas.
- Does what individual tribes say make any difference?
- Tribes should be their own voices, and groups can forward any information that can be destructive to individual Tribes.
- Interests may differ with location of tribe.
- Have other concerns on an individual Government to Government basis that will pursue each tribe's individual goals.
- Mni Sose is a valuable resource, but it is not our complete representation. We have issues that Mni Sose isn't involved in. Mni Sose is not the voice of all natives, nor does it represent the spectrum of issues that all tribes want addressed. We need to have both group and individual representation.
- Individual sovereign entities need to keep fighting for their own agendas and individual goals in case this process falls out. Or, what if Mni Sose doesn't survive?

Ogalala Sioux

- Tribes should be on equal footing with other constituencies, states, farmers, etc.
- Have been working for 29 years to find out how someone came in and just took control without involving the tribes. Who gave U.S. Army Corps of Engineers the right to control

the river without consent? Little Bighorn?

- Government agencies need to bring issues to tribes and ask for approval whether they get it or not. Need to get a resolution in support or opposed to it, on an individual tribal basis.

Northern Cheyenne

- Corps needs to come to their reservation and talk to the Tribal Counsel and honor their water rights.
- Pay the money that is made from their water to the tribe and then come visit the Tribal Counsel.

Rosebud Sioux

- Will cultural issues be addressed when USACE consults with individual Tribes?

Crow Creek Sioux

- Feels that Mni Sose has expended valuable resources.
- Northwest Power Planning Act established guidelines different from those on the Missouri River. A statutory mechanism is necessary to accomplish this. Maybe we could do something similar through congressional act or WRDA.

Standing Rock

- Mni Sose has a representative from each of the tribes. It attempts to offer a consensus from the views of the tribes involved.

B. Consultation on Government-to-Government Level

Mni Sose

- Tribes aren't constituencies; we're sovereigns. Tribes appear to be an afterthought in the Master Manual, yet we own the whole thing.

Lower Brule

- We appreciate the confession of negligence. The Corps will, eventually, have to deal with the tribes individually. Certain issues allow for a consensus, but others require individual consultation.
- Not requesting money damages alone, but also requesting the right to self-rule.
- Have other concerns on an individual Government-to-Government basis that will pursue each tribe's individual goals.
- Government-to-Government negotiations are the key.

Crow Creek Sioux

- Wants to sit down with the decision makers from USACE. Needs to know who with the USACE is "calling the shots." Need to know this to get a start.
- Need to set down with the decision makers and begin to initiate the process of dealing with NEPA.

C. Trust in Working Relationships

Mni Sose

- We appreciate the efforts being made; but actions speak louder than words.
- Corps is not looking at things that tribes are suggesting. Tribes are not getting a response from the Corps that they would like.
- Need someone in list of preparers to be certain about what they are writing, so that Tribal issues are accurately represented, and not ignored and/or misrepresented as has been the trend in the past.
- Corps should be there to support the tribes when they are making a request.
- We see court action and legislation as the only resource because we don't get any cooperation from BIA, Corps, etc.

Lower Brule

- There is no historical backing for what has been said today.
- How do you account for 35 years of second class treatment?
- Lower Brule wants to believe you but how will this commitment manifest itself?
- Will you continue to educate the Tribal public? Will you disseminate information? Or is this a nebulous idea of commitment?
- We have extended ourselves again and again, without any success, so we need to know that we can believe you this time. Why should we?
- We are at a technical disadvantage -- we realize our lack of resources. The Corps won't even allow us to read their data.
- We're tired of fighting you. Help us, we want to forgive you. We want to draw a circle to draw you in.
- There are opportunities to move forward collectively, but if this is not possible we will do it separately.
- Corps needs to be there to provide technical support when asked for it.
- We appreciate the confession of negligence. The Corps will, eventually, have to deal with the Tribes individually. Certain issues allow for a consensus but others require individual consultation.
- What happened at this meeting should not just be put on the shelf.
- Tribe sent a letter addressing a number of points on May 22, 1998. Letter from Assistant Secretary of the Army on January 15, 1999 stated that it was concerned and addressed each point.
- Has seen a doorway of communication open up between the Tribes and the USACE. Feels that solutions can be found.
- Need to move beyond the past and work for a better future.
- Concerned that the leadership of the USACE has not been as consistent as that of the Lower Brule Tribe.
- Have come close 4 times in the past 12 years to filing a lawsuit against the USACE, but feels that good faith still remains and that a relationship can be built between all of the

Federal agencies and not just the USACE.

- There is no future without forgiveness. Wants USACE to work with tribes to help realize solutions, and we will forgive your genocide.
- Extend possibility of forming a partnership between the Lower Brule and the USACE. May be the last chance, as too many resources are being expended.
- Has been difficult in the past to develop a working relationship and often once they have been formed, the persons will leave and it becomes necessary to build that relationship again.

Oglala Sioux

- Corps needs to admit guilt and that they were wrong, and then set down with Tribes and hash it out.
- Wants the commitment of the Corps to change their course of dealing with the Tribes from their past behavior.
- The Corps in South Dakota needs to be more responsive, so Tribes don't have to go to Omaha.

Standing Rock

- By recognizing the Tribal budget concerns, the USACE would be acknowledging that the Tribes have a legitimate interest.

Crow Creek Sioux

- Impressed with USACE putting Tribal letters into the Tribal Appendix.
- Feels that there is a good dialogue between the tribes and the USACE compared to how it has been in the past.

Rosebud Sioux

- If the USACE follows the Tribal Policy principles things should be all right.

D. Development of Process/Master Manual Schedule and Issues

Mni Sose

- Number one issue is the Master Manual for the board of directors and the committee.
- If serious about getting Tribal input, the Corps has to set the schedule back considerably.
- We feel it is impossible to incorporate Tribal input by October 1999. There just isn't enough time.
- The concerns we have stated are not rhetoric. But these concerns have been ignored in the initial drafts.
- Corps is not looking at things that Tribes are suggesting. Tribes are not getting the amount of response from the Corps that they would like.
- Need to interface with writers of the EIS. Needs to be a balance, because tribes have given everything, and have been given nothing in return in a monetary sense.
- Issues that Corps may think are outside of the Master Manual are often those that Tribes think should be included.
- Tribal mention in Ch. 3, pp.73-75 -- only about a page narrating Tribal issues. Feel there is

scant treatment and analysis of Tribal issues. Feels that language is completely wrong. Mostly discusses quantification of water rights. Want a better representation of Indian issues. Should be integrated into the entire document.

- Ask the Corps to comply with the law and policy of the NEPA.
- Reiterated concern with time line. Concerned that there is not enough time to address the issues in a meaningful way. Feels that the focus is and has been mainly on quantification. Set back the time frames. Did it for farmers and navigators in the past, and now need to do it for the Tribes.
- Need to have appropriations to have cultural resources maintained. Feel that cultural resources are an operational issue.
- The whole process needs to be revamped. Tribal concerns are always viewed as non-operational issues.
- Frustration is the word of the day. How about a holistic approach?
- Issue is resources available to them.
- Need to identify and gather the necessary amount of information to do what needs to be done.
- Not enough time with limited resources available to put together anything which would accurately represent the Tribal positions.
- Need \$20,000 to complete task.
- Will have something in to meet deadline. But it will not be complete, due to time constraints.
- Wants USACE to consider the protection of cultural resources an operational issue.
- USACE did not do the study that the Tribes asked them to do, but, instead, did other studies. Tribes still want the study done, but would prefer to do it as a partnership. The USACE needs the help of the Tribes. Partnership between Mni Sose and individual tribes. Need an executive level decision. Possibly request an extension which would allow the study to get done.
- The Master Manual is the number one priority statue; also concerned with amending other statutes and "Pick-Sloan" reform.

Lower Brule

- Concerned about the accuracy of recording. The recording process and the planned distribution of the record was explained.
- Concerned about the formation of the Master Manual schedule.
- Will you continue to educate the Tribal public? Will you disseminate information? Or is it a nebulous idea of a commitment?
- We need a comprehensive list of Tribal issues and concerns from a Tribal perspective.
- Wants to develop some protocols on consultation process between the tribes and the Corps.
- It is unclear as to when and if the Corps will respond to the Tribes.
- Timing is important, not only in terms of responsiveness, but also in terms of scheduling

- aspects of day-to-day activities.
- Why is there the schedule, and what are the significance of the dates? Seeking rationale for dates and formation of the calendar.
- Solutions must be the goal. Sometimes things just stall out and we never know if there's a solution or not. Knowing this would allow us to apportion our resources.
- Corp needs to listen to the meaning of what each Tribe is saying. Need to go out of their way to get comments and suggestions.
- Need a set of ground rules that tribes and Corps will both have to comply with.
- Maybe Corps alone is not to blame; it has been going on for 9 years. Clearly something is wrong.
- Can Mni Sose people say if they are on line with the schedule of the USACE?
- Does NEPA process dictate that USACE has a preferred alternative?
- Have difficulties understanding and sifting through the documents issued by the USACE.
- Feels that preferred alternative may not be the best way to deal with these issues.
- What happened at this meeting should not just be put on the shelf.
- Want to incorporate 638 language into the USACE operations.
- Concerned that so many tribes were not represented at this meeting -- hard for this to lead to consensus.
- Has been going on for 9 years. Do not seem any closer to reaching the goals than before we started. Doesn't know who is to blame. Feels that this meeting may be a possible step in the right direction.
- Has seen a doorway of communication open up between the Tribes and the USACE. Feels that solutions can be found.
- Wants this process to move forward and the rage must be set aside. But we need to see action from USACE.
- Need to know in advance what will be going on so that they can act proactively. No Tribe has ever come to table with a hidden agenda.

Rosebud Sioux

- If the USACE follows the Tribal Policy Principles things should be all right.

Crow Creek Sioux

- Want a revised preliminary draft.
- Concerned that many of the documents and Tribal concerns have been lost in a "black hole."
- Who came up with the operational and non-operational aspects of the river?
- Wanted this resolved a long time ago. Feels that this meeting should have taken place before the release of the document.
- Difficult to incorporate information gathered after preferred alternative is already submitted. Better to wait and get all the information before issuing a preferred alternative.
- Does not think that the Memorial Day deadline gives enough time for Tribes to convey their messages and for the USACE to digest all of the information.

- Before the USACE released a draft EIS there should be consultation with Tribes about what is an operational issue and what is a non-operational issue. This is a key issue to developing alternatives. It would be a good starting place.
- Wondering who made the decision in past documents distinguishing between operational and non-operational issues.
- Impressed with USACE putting Tribal letters into the Tribal Appendix.
- Gives credit to the USACE for taking positive steps.
- Doesn't see anything that makes him believe that the Tribes will be more successful in impacting the NEPA process than in the past. The USACE has ignored EPA comments.
- Level of Tribal comment has gone way up. Know more about what USACE is doing than before, but still difficult to impact their decisions.
- Feels that there is a good dialogue between the Tribes and the USACE in comparison to how it has been in the past.

Oglala Sioux

- Wondering why our concerns have gone unnoted in the literature produced by the USACE.
- We have been having these meetings for years and consistently raise the same issues, but they are rarely noted, much less incorporated in any planning or policy.
- Feels that the Manual should have been written differently. Feels that Indian Law should be mentioned alongside Federal Law and State law. Has been expressing views for 10 years, and is still waiting to see his views put down in writing. River belongs to the Tribes, not the United States. Have not gotten any money.
- Concerned and frustrated that many of the documents and Tribal concerns have been lost in a "black hole."
- Need to have some type of inclusion of historic events. Indian history should also be heard and included in the protocol.
- We support the Mni Sose.
- Wants to have its rights incorporated into the Master Manual to ensure that it will have rights in the future, and can possibly use them to be compensated for past wrongs.

Standing Rock

- USACE needs to put in a provision which will help the Tribes financially with litigations, etc.
- Concerned that the current language distinguishing between operational and non-operational issues leaves the Tribes in a situation where the Tribes "just don't fit in."
- Need to reword the EIS so that there is a forum for tribes to be recognized.
- Feels that the resources are an important issue and this needs to be addressed.
- hard to gather necessary funds. Feels the USACE should be giving the Tribes, through Mni Sose, funding so that these issues can be resolved.

E. Alternative Forums / Other Issues

Mni Sose

- Hope to come up with preferred alternatives, deal with issues that can not be dealt with in other forums.
- Erosion is a concern, possibly better dealt with in another forum. It is, however, an issue that needs to be addressed. Trust lands and farms have disappeared while we waited.
- How do we balance navigational and recreational interests?

Lower Brule

- Discussion of forming a workgroup which would deal with Cultural Resources. Mentioned that the tribe by Bonneville Dam was awarded a large budget to deal with Cultural Resources.
- This same type of logic needs to be applied to the issues facing the Lower Brule Tribe as well.
- Need to have a set of steps to go through to resolve problems on a local level and if solution reached fine. But if one is not reached, need some plan of resolution, for example, identify some steps to resolve the problem.
- Solutions must be the goal. Sometimes things just stall out and we never know if there's a resolution or not. This would allow us to apportion our resources.
- One suggested set of steps for solving problems would be:
 1. Tribal representatives meet with federal government specialists to find a solution.
If no solution, then move to step 2.
 2. Decision makers from the tribes and federal government meet to resolve the problem.
If no solution, then move to step 3.
 3. A letter would be sent from the Corps to the Tribe stating that no solution can be reached, thus, permitting the Tribe to move to other forums, i.e., legislative, etc.
 4. Time frames for each step would need to be established, and guidelines for who could initiate the process would need to be established.
- Need a set of ground rules that Tribes and Corps will both have to comply with.
- What happened at this meeting should not just be put on the shelf.
- Chip Smith, Tribal Liaison, is a point of contact for the Tribes to use to contact the USACE.
- Tribes should be consulted when permits are issued to irrigators and others with river interests. Permits affect Tribes in many ways, not the least of which is self-government.
- Could they work together to get money to stabilize the banks -- using the study which has already been done?

Crow Creek Sioux

- Feels that everybody knows what the concerns are, and that they are clearly stated.

Oglala Sioux

- Most all issues are the same across the board.

Rosebud Sioux

- Economic development and compensatory issues. To see what other Tribes are doing with these issues.
- Identify legislative issues for Tribal governments.
- Will cultural issues be addressed when USACE consults with individual Tribes?

Northern Cheyenne

- Are unable to utilize water rights, because of regulation. Cannot pipe it, because another Tribe (Crow) will not let them pipe across their reservation.

Standing Rock

- Even though issues might be defined as non-operational, they are still valid concerns. Include us, don't exclude us.
- Concerned that the current language distinguishing between operational and non-operational issues leaves the Tribes in a situation where the Tribes "just don't fit in."

F. Agency Support

Mni Sose

- Federal agencies assume that Tribes have the infrastructure to handle problems; this is a growing problem. Tribes do not have the infrastructure. This makes it difficult for Tribes to do adequate studies without expending vast amounts of resources.
- Issue is resources available to them.
- Need to identify and gather the necessary amount of information to do what needs to be done.
- Biggest indicator of commitment is money
- Need \$20,000 to complete task.
- Many Tribal leaders are not fully informed on Tribal water rights.
- Would like for Mni Sose to be given the opportunity (financially) to inform to Tribal leaders on these issues. This funding could come from the USACE and would allow Tribes to explore the EIS.
- Want a study done on the protection of Cultural Resources on the main stem with respect to the operation of the dams. Would possibly use bio-technical solutions.
- USACE did not do the study that the Tribes asked them to do, but did other studies. Tribes still want the study done, but would prefer to do it as a partnership. The USACE needs the help of the Tribes. Partnership between Mni Sose and individual Tribes. Need an executive level decision. Possibly request an extension which would allow the study to get done.

Lower Brule

- Corps needs to be there to provide technical support when asked for it.
- We want a study on the scale of the Glenn Canyon Dam.
- For Mni Sose to do what needs to get done, estimate \$50,000 funding to get them through October. \$20,000 would get them through June. They could deal with the

individual Tribal concerns and collective Tribal concerns.

- Hard to find the actual WRDA itself because it is hard to understand. Need language in WRDA specifically citing opportunities for Tribes to develop their water resources.
- Want clarification from USACE on WRDA, and USACE agreed to get the requested answers to the Lower Brule.
- USACE needs to explain WRDA to the Tribes so that they can better understand it.
- Concerned about re-authorization of WRDA.
- USACE has already identified cultural sites and the costs of stabilizing those places. Studies have been done. We on the river are watching our sites float away. Can something be done?
- Could they work to get money to stabilize the banks through the study which has already been done?
- Maybe a work group could be formed, either inter-Tribal or inter-agency. Citizens on Bonneville Dam, which is now in the same district as us, were awarded huge sums of money for preservation of cultural sites. If you did it in Bonneville, let's do it here.
- Want to know how USACE could help Lower Brule to get help.
- Has seen a doorway of communication open up between the Tribes and the USACE. Feels that solutions can be found.
- Concerned that the leadership of the USACE has not been as consistent as that of the Lower Brule Tribe.
- Extend possibility of forming a partnership between the Lower Brule and the USACE. May be the last chance, as too many resources are being expended.
- Lower Brule and Standing Rock have furthered the issue of Cultural Resources and is glad to see the progress in the funding schedule of the USACE.
- Wants a copy of the 1944 Flood Control Act.

Oglala Sioux

- Make sure that there is full commitment to resources for line items.

Standing Rock

- USACE needs to let Tribes know more about the financial resources available.
- USACE needs to put in a provision which will help the tribes financially with litigations, etc.
- In the budget there needs to be something included which addresses Tribes.
- Feels that the resources are an important issue and this needs to be addressed.
- Hard to gather the necessary funds. Feels the USACE should be giving the Tribes, through Mni Sose funding, so that these issues can be resolved.

Crow Creek Sioux

- Concerned about USACE not doing studies asked for by not only Tribes, but also farmers in the lower basin.
- Important to see that funding requests for Cultural Resources has been bumped up to Level 2.

- Need to get funding, and the sooner the better, because damage is continually being done.
- Tribes are slowly moving up the ladder of prioritization for these types of projects.

Rosebud Sioux

- Needs a copy of the 1944 Flood Control Act.

II. Federal Trust Responsibilities

A. Treaty Issues (including history & breach of Indian Law)

Mni Sose

- Need to have some type of inclusion of historic events. Indian history should also be heard and included in the protocol.
- Many Tribal leaders are not fully informed on Tribal water rights.

Lower Brule

- There is no historical backing for what has been said today.
- How do you account for 35 year of second class treatment?
- There's too much painful history that the Corps refuses to acknowledge.
- USACE has a duty to recognize its responsibilities as were spelled out in the treaties.
- Does not want his right as a Tribal member being diminished due to his South Dakota citizenship.

Oglala Sioux

- The river is the tribes' and they want treaties recognized in black and white.
- Try to undue history.
- Have been working for 29 years to find out how someone came in and just took control without involving the Tribes. Who gave U.S. Army Corps of Engineers the right to control the river without Tribal consent? Little bighorn?
- The Corps doesn't understand history and that affects modern issues.

Rosebud Sioux

- Treaties are our Bible.
- Also concerned with the taking of lands.
- Issues of compensation are a treaty right and thus should have tribal representation.

Northern Cheyenne

- Their Tribe has reserved water rights on a tributary of the Missouri River.

Crow Creek Sioux

- It would be a good thing to see a list of what the Tribes' rights are.

B. Environmental Degradation

Lower Brule

- Erosion is a devastating problem that is creating problems for future development.

III. Water Rights

A. Recognition of Winter's Reserved Water Rights Doctrine

Mni Sose

- How do specific Tribes prioritize and appropriate the water adjacent to their respective lands?

B. Analysis of System Operations with Future Tribal Water Depletions

Mni Sose

- How do specific Tribes prioritize and appropriate the water adjacent to their respective lands?

C. Recognitions by Corps that Quantification is Not Required

Lower Brule

- We do not support quantification.

Oglala Sioux

- Need to protect the Tribes' asset (river).
- Reiterated concern with time line. Concerned that there is not enough time to address the issues in a meaningful way. Feels that the focus is and has been mainly on quantification. Set back the time frames. Did it for farmers and navigators in the past, and now need to do it for the Tribes.

■

D. Analysis of Habitat Protection for Sensitive Species with Tribal Water Depletions

IV. Impacts to Tribal Resources

A. Native Cultural Resources

Mni Sose

- Need to have appropriations to have culture resources maintained. Feel that cultural resources are an operational issue.
- Wants USACE to consider the protection of Cultural Resources an operational issue.
- Want a study done on the protection of Cultural Resources on the main stem with respect to the operation of the dams.
- USACE did not do the study that the Tribes asked them to do, but did other studies. Tribes still want the study done, but would prefer that it be done as a partnership between Mni Sose and individual Tribes. USACE needs the help of the tribes. Possibly request an

extension which would allow the study to get done.

- Could they work to get money together to stabilize the banks through using the study which is already done?
- Maybe a work group should be formed, either inter-Tribal or inter-agency. Citizens on Bonneville Dam, which is now in the same district as one of the Tribes, were awarded huge sums of money for preservation of cultural sites. If you did it in Bonneville, let's do it here.

Lower Brule

- Cultural Resources -- if USACE would live up to existing Federal Law, there needs to be documentation, and other things and coordinate with Tribes on what is to be done.
- The Reparation Act has had a ripple effect on basin Tribes because Tribal remains have been washed out as shore lines erode. Some agreement has been reached in North Dakota as to taking care of ancestral remains in an appropriate and mutually agreeable manner.
- Need to stop erosion, preserve cultural land base, and to replant with aboriginal species.
- USACE has already identified cultural sites and the costs of stabilizing those places. Studies have been done. We on the river are watching our sites float way. Can something be done?
- Discussion of forming a workgroup which would deal with Cultural Resources. Mentioned that the tribe by Bonneville Dam was awarded a large budget to deal with Cultural Resources.
- Many traditional sites that are not archeological sites are also in the Tribes' understanding of Cultural Resources (Vision Quest, Traditional Medicine sites, etc.).
- Lower Brule and Standing Rock have furthered the issue of Cultural Resources and is glad to see the progress in the funding schedule of the USACE.

Crow Creek Sioux

- Northwest Power Planning Act established guidelines different from those on the Missouri River. A statutory mechanism is necessary to accomplish this. Maybe we would do something similar through a congressional act or WRDA (this statement in response to a comment by USACE regarding the NW Cultural Resources Act).
- Important to see that funding requests for Cultural Resource has been bumped up to Level 2.
- Need to get funding, and the sooner the better, because damage is continually being done.
- Tribes are slowly moving up the ladder of prioritization for these types of projects.

B. Water Supply

Mni Sose

- Loss of land is still a concern, just compensation is still being debated, particularly Santee in NB, Yankton Sioux in SD, and Omaha Tribe. Irrigation, erosion, sedimentation. Irrigation promised in "Pick-Sloan" project has never been granted.
- Looking at reservoirs for economic development, but have quantity and quality problems.

Oglala Sioux

- Need to protect the Tribes' asset (river).

C. Water Quality

Mni Sose

- Needs assessments for each Tribe:
 - Lewis & Clark, Francis Case, and Sharpe, feasibility study for drinking water
 - Quality and quantity of water
 - Who to speak to talk about water quality, state, EPA, tribe, ???
 - Fiduciary duties to provide clean drinking water
- Looking at reservoirs for economic development, but have quality and quantity problems.
- Concerned with public health, from the quality of drinking water. Want to be able to be self-sufficient and be able to provide own drinking water and water for other purposes.

Lower Brule

- There already is a health issue.

Oglala Sioux

- Need to protect the Tribes' asset (the river).

D. Wildlife

E. Wetlands and Riparian Habitat

F. Fish

Lower Brule

- Releases affecting fish and fisheries.

G. Sedimentation

Mni Sose

- Other concerns take time away from dealing with water issues which are also important.

Lower Brule

- Why did USACE funding run out when determining where silt went, when it reached the Reservation boundaries?

Crow Creek Sioux

- Sedimentation issues (Bad River being pushed to Lake Sharpe).

H. Shoreline Erosion and Bank Stabilization

Mni Sose

- Erosion is a concern, possibly better dealt with in another forum. It is, however, an issue that needs to be addressed. Trust lands and farms have disappeared.
- Want to change the operation of the dams to minimize the wave action to decrease

erosion.

Lower Brule

- Erosion is a devastating problem, creating problems for future development.
- The Repatriation Act has had a ripple effect on basin Tribes because Tribal remains have been washed out as shore lines erode. Some agreement had been reached in North Dakota as to taking care of ancestral remains in an appropriate and mutually agreeable manner.
- Meeting between USACE, the Tribe, and the South Dakota Archaeological Society developed a successful method of dealing with the erosion issues by terracing and stabilizing the shoreline.
- Need to stop erosion, preserve cultural land base, and to replant with aboriginal species.

I. Tributary Flooding

Mni Sose

- We also need to address tributary issues. Downstream navigation could be assisted with tributary inflows without affecting lake levels that reservations border on. This was not in the EIS.

J. Recreation

V. Environmental Justice

A. Disproportionate Impact of Construction and Taking of Land and Operation of Dams on Tribal Land and Members

Mni Sose

- Loss of land is still a concern, just compensation is still being debated, particularly Santee in NB, Yankton Sioux in SD, and Omaha Tribe. Irrigation, erosion, sedimentation. Irrigation promised in "Pick-Sloan" project has never been granted.

Lower Brule

- There's too much painful history that the Corps refuses to acknowledge.

Oglala Sioux

- "Pick-Sloan" plan was unfavorable to the Tribes.

Rosebud Sioux

- Also concerned with the taking of lands.

B. Benefits from hydropower Revenues not Received by Tribes

Mni Sioux

- Also concerned with hydropower depletion, want to get attention to the Corps.
- Benefits of river are leaving the reservation via power lines.

Oglala Sioux

- Tribes have not realized any of the monetary benefits. Tribes should be recognized and have some of the back money given to the Tribes.

Rosebud Sioux

- Utilities concerns. Feel that they do not have a clear understanding of what the process is. Neither do the common people. Want a utilities company and be the provided not the customer.
- Deregulate electricity and allow tribes more lee-way. Integrated resources plan.

C. Benefits from Recreation/Tourism Revenues not Received by Tribes

Mni Sioux

- Concerned with recreation. Feels that tribes below Sioux City have a strong lobby for navigation. Tribes benefit very little from income traced to recreation.(\$125 million).

Oglala Sioux

- Tribes have not realized any of the monetary benefits. Tribes should be recognized and have some the of the back money be given to the Tribes.
- Feel that the recreation functions are not benefiting the Tribes.

Rosebud Sioux

- Tourism is an issue. Alliance of Tribal Tourism Advocates.

D. Flood Control Benefits Greatest for Non-Indian Communities

Oglala Sioux

- Tribes have not realized any of the monetary benefits. Tribes should be recognized and have some of the back money be given to the Tribes.
- "Pick-Sloan" plan was unfavorable to the Tribes.

E. Inequity in Electrical Rates

Oglala Sioux

- Tribes have not received any of the monetary benefits. Tribes should be recognized and have some of the back money be given to the Tribes.

F. Lake Sharpe Drawdown

Crow Creek Sioux

- Lake Sharpe drawdown is a troubling issue. and representative of Tribal issues in the basin.
- Sedimentation issues (Bad River being pushed to Lake Sharpe).

G. Misc. Benefits/Inequities/Compensation

Rosebud Sioux

- Also want to be involved in telecommunications. Airspace has been auctioned off under

an eminent domain.

- Reiterate that issues of compensation are important.

Oglala Sioux

- Need to define Indian, federal, and State law. Pay compensation.

Crow Creek Sioux

- Tribes bear costs, and benefits are enjoyed off of the Reservation.

VI. Importance of River/Water

A. Economically

Mni Sose

- The river is our only real resource. Other tribes have timber, etc., but we don't.

Crow Creek Sioux

- We are trying to buy Big Bend Dam.

Oglala Sioux

- Money being lost (on water) needs to be recouped back to the tribes.
- Tribes can control a certain percentage of the river and make some dollars and thus build up some infrastructure.

Northern Cheyenne

- Water is life to the Cheyenne people.

Lower Brule

- Water is medicine first and then a means of money, navigation, recreation, etc. Power and ability to drive legislation second.

B. Spiritually/Culturally

Northern Cheyenne

- Water is life to the Cheyenne people.

Lower Brule

- Water is medicine first and then a means of money, navigation, recreation, etc. Power and ability to drive legislation second.
- Water is sacred to the Lakota people. They only want the river back. They had it all before the dams were built. Took their whole economy, the ability to feed and cloth themselves. They want it to be a river again, and not just a string of reservoirs.
- The tribes need to maintain the sacred status of the river -- the whole river, start to finish.

Executive Director:
Richard Bad Moccasin

Member Tribes:
Arapaho & Sioux Tribes of Fort
Peck, Poplar, Montana

Blackfeet Tribe
Browning, Montana

Cheyenne River Sioux Tribe
Eagle Butte, South Dakota

Chippewa Cree Tribe
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe
Fort Thompson, South Dakota

Eastern Shoshone Tribe
Fort Washakie, Wyoming

Flandreau Santee Sioux Tribe
Flandreau, South Dakota

Fort Belknap Tribes
Harlem, Montana

Kichapoo Tribe in Kansas
Horton, Kansas

Lower Brule Sioux Tribe
Lower Brule, South Dakota

Northern Arapaho Tribe
Fort Washakie, Wyoming

Northern Cheyenne Tribe
Lame Deer, Montana

Oglala Sioux Tribe
Pine Ridge, South Dakota

Omaha Tribe
Macy, Nebraska

Ponca Tribe of Nebraska
Niobrara, Nebraska

Prairie Band of Potawatomi
Mayetta, Kansas

Rosebud Sioux Tribe
Rosebud, South Dakota

Sec & Fox Nation of Missouri
Reserve, Kansas

Santee Sioux Tribe
Niobrara, Nebraska

Sisseton-Wahpeton Sioux Tribe
Agency Village, South Dakota

Spirit Lake Tribe
Fort Totten, North Dakota

Standing Rock Sioux Tribe
Fort Yates, North Dakota

Three Affiliated Tribes
New Town, North Dakota

Turtle Mt. Band of Chippewa
Bekcourt, North Dakota

Winnebago Tribe of Nebraska
Winnebago, Nebraska

Yankton Sioux Tribe
Aarty, South Dakota

Mni Sose Intertribal Water Rights Coalition, Inc.
P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

February 25, 1999

Col. Michael S. Meuleners
Deputy Division Engineer
US Army Corps of Engineers
Missouri River Region
12565 West Center Road
Omaha, NE 68144-3869

Dear Colonel Meuleners:

I thank you for your support of Army Corps of Engineers' Tribal Consultation Meeting and for making your staff available to discuss the Preliminary RDEIS to the Missouri River Basin tribal leaders. Due to the presence of the Army Corps' team members and the conference facilitator the meeting was very productive.

The Mni Sose Intertribal Water Rights Coalition requests a meeting with you and your staff in the near future to discuss, in detail, the alternatives outlined in the Preliminary RDEIS for the Master Manual.

Earlier this month, the Mni Sose Board approved the establishment of a committee to develop a response document to the Preliminary RDEIS. I wish to discuss the directives of the committee at the proposed meeting.

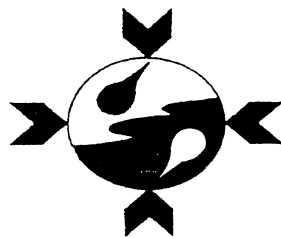
I will be in contact with you soon regarding your availability to meet with the Coalition to discuss the PDEIS alternatives.

Sincerely,

Richard Bad Moccasin
Richard Bad Moccasin
Executive Director

cc: Rose Hargrave
Peg O'Bryan
David Vader

MNI SOSE INTERTRIBAL WATER RIGHTS COALITION



MISSOURI RIVER BASIN TRIBAL MASTER MANUAL PROGRAM

X Submitted March 1999

Executive Director
Richard J. Williams

Member Tribes:
Assiniboine & Sioux Tribes of Fort
Peck, Peplar, Montana

Blackfoot Tribe
Blackfoot, Montana

Chippewa River Sioux Tribe
Edge River, South Dakota

Chippewa Cree Tribe
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe
Fort Thompson, South Dakota

Eastern Shoshone Tribe
Fort Washakie, Wyoming

Flandreau Santee Sioux Tribe
Flandreau, South Dakota

Fort Belknap Tribes
Harlem, Montana

Kichapoo Tribe in Kansas
Horton, Kansas

Lower Brule Sioux Tribe
Lower Brule, South Dakota

Northern Arapaho Tribe
Fort Washakie, Wyoming

Northern Cheyenne Tribe
Lame Deer, Montana

Oglala Sioux Tribe
Pine Ridge, South Dakota

Omaha Tribe
Macy, Nebraska

Ponca Tribe of Nebraska
Niobrara, Nebraska

Prairie Band of Potawatomi
Mayetta, Kansas

Rosebud Sioux Tribe
Rosebud, South Dakota

Sac & Fox Nation of Missouri
Reserve, Kansas

Santee Sioux Tribe
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Three Affiliated Tribes
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Winnnebago Tribe of Nebraska
Winnnebago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2800, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2800

MNI SOSE INTERTRIBAL WATER RIGHTS COALITION MISSOURI RIVER BASIN TRIBAL MASTER MANUAL PROGRAM

The Mni Sose Intertribal Water Rights Coalition submits a request for financial assistance in the amount of \$201,971 to the Office of the Assistant Secretary of the Army (Civil Works) to assist thirteen (13) Tribes located on the mainstem of the Missouri River. The Missouri River Basin Tribal Master Manual Program's goal is to assist 13 Tribes in the development of a tribal sensitive Master Water Manual Control "Alternative" and to provide training to the Tribes in cultural resource and sacred sites protection.

In September 1993, the Mni Sose Intertribal Water Rights Member Tribes filed its "Response to the Missouri River Master Water Control Manual Preferred Draft Environmental Impact Statement (PDEIS)." The Coalition has commented on the Draft EIS on two occasions. On June 6, 1994, the Coalition provided to the Corps the "Initial Coalition Response to Preferred Alternative." In September 1994, the Coalition filed comments entitled "Request to the U.S. Army Corps of Engineers for Recognition of Indian Water Rights in the Master Water Control Manual."

In August 1998, the Corps of Engineers released its Missouri River Preliminary Revised Draft Environmental Impact Statement (PDEIS) for the Missouri River Master Water Control Manual for review and update. The PDEIS contains 64 alternatives, based on 16 representative alternatives, in four categories. The four categories are the current master manual, conservation alternative, fish and wildlife alternative, and Mississippi River alternative. Each of these alternatives highlights or emphasizes an aspect of river management for the Missouri River.

The Corps of Engineers has devised a computer model for the PDEIS which contains the four variables of water levels in three Missouri River reservoirs, levels of navigation service, permanent reservoir pools, and spring rise.

Based on the above alternatives and computer modeling, the Corps of Engineers is scheduled to complete public comments by June 1, 1999, to finalize the draft environmental impact statement and to complete the environmental impact statement by the year 2000.

Within this Corps of Engineers planning and scheduling, there is no attention to tribal issues. The narrative on Indian water rights still implies that unquantified rights are not vested with the Tribes. This places the Tribes "at risk" in the areas of water rights protection and preservation.

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The U.S. Army Corps of Engineers continues to identify tribal cultural resource protection as a "non-operational" issue in the Master Water Control Manual revision. The Tribes have not actively engaged in all aspects of the cultural resource protection and management.

The Native American Graves Protection and Repatriation Act (NAGPRA) is designed to stem the desecration of Native remains, funeral objects, and other cultural items by recognizing tribal ownership and control over their repatriation. NAGPRA is designed to prevent both private museums and scavengers **and federal agencies** from impacting these objects and sites. NAGPRA applies, as ACOE Missouri River operations affect Native remains and cultural sites.

NAGPRA requires the Corps to return to the Tribes any unearthed remains or objects, and to ensure that the impacts of Corps operations on Native cultural resources are minimized.

Additionally, the National Environmental Policy Act's (NEPA) regulations require special consideration of "the proximity to historic and cultural resources." 40 CFR 1508.27. The National Historic Properties Act also requires special evaluations of the impacts on federal lands of activities affecting certain historically significant sites.

The Mni Sose Coalition member Tribes reject the Preferred Alternative and DEIS as currently written, for violating these provisions. As shown below, the Corps simply has failed to confer adequate consideration on the system's impacts on Native sacred areas and cultural objects.

The treatment of "historic properties" in Technical Report Vol. 7H and the DEIS treats Native American burial grounds, cultural objects, and religious sites along the Missouri River as follows:

"In some cases, an Indian might value Native archaeological sites in some entirely subjective, personal, and mystical sense having nothing to do with scientific merit. Traditional religious practitioners, in particular, may refer to archaeological sites as "sacred," a term often applied to things that in a mystical sense, are worthy of special status or respect. As generally applied to sites, we loosely interpret this as reference to an essence of the original living occupants which merits deference or respect"

The excavation, study, and curation of Native American human remains have generated much criticism by Native Americans in recent years. Many contend the practice to be elitist and racist, at best, and unacceptable on religious grounds in any case."

DEIS, Vol. 7H, p. 2. discusses the economic significance of historic properties.

Notwithstanding the language cited above, the Corps makes no effort to study ways that Native cultural resources may be protected:

"Any historic property which is adversely affected, or will potentially be adversely affected by water management under one alternative, is subject to the same kind of effect under all other alternatives examined." *Id.* at 11.

The DEIS discusses the impacts of the Preferred Alternative on the various Pick-Sloan project purposes, but does not include an assessment of the Preferred Alternative's impact on Native remains, cultural objects, and sacred sites. The Corps has thrown its arms up in the air, and comes up with a self-serving generalization that all alternatives for system operations have the same impacts on Native cultural resources. There is no rationale or justification in support of this. The conclusion itself defies common sense. Consequently, the DEIS is fatally flawed and new studies must be undertaken on this issue.

The Corps undermines its own "manifest destiny" conclusions by recognizing that - "Water management regimens which are beneficial for some sites, in the sense that adverse effects may be decelerated, result in accelerated similar effects elsewhere. Shifts in the relative importance of different adverse effects may take place on a site-specific basis." *Id.*

Although the ultimate conclusion is that there is nothing the Corps can do to mitigate the impacts of its operations on Native cultural resources, the Corps also states that different "water management regimens" will result in different levels of impacts on different sites.

Given this fact, clearly the Corps can mitigate the damage to culturally significant sites. A reasonable mitigation strategy would include:

1. Consultation with tribal governments on sites, objects, and other cultural resources to be protected.
2. Revision of the DEIS to include tribal priorities for the protection of Native remains and cultural resources.
3. Consideration of impacts of alternatives for system operations on the priority sites.
4. Selection of preferred alternatives based upon the objective of minimizing impacts of system operations on priority sites.
5. Coordination with Tribes on mitigation efforts for impacts to cultural sites of the revised Preferred Alternative.

In the DEIS, the Corps treats Native remains, artifacts and cultural objects as "historic properties." Thus, the Corps treats sacred heritage no differently than, say, an abandoned cavalry fort. This is highly inappropriate.

Clearly, new studies are required to locate the priority sites, and to determine how they may be protected in a new water management regimen.

The Corps has identified 158 historically or culturally significant sites at Fort Peck, 676 at Lake Sakakawea and 945 at Oahe. The data was not even provided for Lakes Sharpe, Francis Case, and Lewis and Clarke.

Clearly, there is a substantial amount of relevant information in this area which the Corps does not possess. This results from inadequate consultation between the Corps and the basin's Indians for more than 30 years. In addition, for those sites which have been identified, there is concern that the Corps does not properly identify the significance of the sites.

Mni Sose has identified an instance in which a site was discovered on an Indian Reservation along the Missouri River. The site included a ring of objects, which the Corps identified as a tipi ring, with no cultural significance. The Indian representatives properly identified the site's historic use and significance. It was a sacred area, utilized for fasting and visions. The Corps of Engineers had failed to properly identify a site which holds substantial religious and cultural significance to the people on whose reservation the site is located.

This illustrates the importance of resurveying what the Corps terms "historic properties" in consultation with the Tribes. The new survey should identify all sites utilized for cultural or religious activities and their proximity to the water fluctuation zones. These sites cannot be valued in the same manner as barge traffic or recreation; the ACOE should not value them as part of the computer modeling for alternatives. Instead, each alternative should include a narrative description of its impact on important tribal cultural resources. In this manner, the issue of tribal sacred areas, burial grounds and cultural areas will be elevated to the status which federal law truly requires, in the NEPA process.

Ultimately, the Corps should work in close coordination with the Tribes to identify the culturally significant areas, and should evaluate the impact of the preferred alternatives on these sites. Otherwise, if the Corps proceeds and finalizes the EIS and preferred alternative, it will have once again ignored the concerns expressed by Indian Tribes that the construction and operation of the Pick-Sloan project constitutes cultural genocide.

The description of the issue of cultural resources contained in Vol. 7H (and cited above) must be rewritten. It is an inaccurate portrayal of the Native cultural resources issues.

It is inaccurate in two important ways. First, it de-emphasizes the fact that in this instance the context of the discussion is the operation of a public works project by a federal agency. This is not the type of situation where the threat to cultural resources is from private archaeologists or scavengers. It is from an agency of the United States. Thus, as stated above, the limits on federal actions impacting

these resources that are contained in NAGPRA, NEPA, and other statutes apply to the DEIS. The Corps has basically ignored these requirements.

Instead, the discussion philosophizes on the "perceived" threat to Native cultural resources posed by archaeologists. This narrative is no substitute for a serious effort to protect Native remains and cultural objects, as is required by federal law. Worse yet, the narrative discussion and the inventory of sites contain serious inaccuracies. The narrative discussion projects the issue of unearthings by archaeologists as one between "religious factions" and archaeologists, involving "prehistoric" artifacts.

Along the Missouri River, the cultural resources impacted by Corps operations are not "prehistoric" artifacts. They are the human remains and cultural objects of our ancestors of recent generations. The religious sites that are impacted may in many instances be used today. The Corps states in the DEIS that "Religious factions remain unimpressed that ancient remains of all races have been objects of study . . ." *Id.* At 3. Archaeologists and scavengers unearth and take not only ancient Native cultural resources but relatively recent human remains and cultural objects. This is highly objectionable to the Indian Tribes, not just to "religious factions."

The DEIS includes no respect for the role of tribal governments in protecting Native cultural resources. The discussion of historic properties and human remains includes no mention of Indian Tribal governments.

The Tribal governments play a central role in the protection of cultural resources. The Congress recognized this in enacting NAGPRA. However, the Corps would have one believe that Tribes play no role whatsoever in cultural resources protection, but that instead the only Indians interested in the issue are some unidentified mystics. As a Coalition of tribal governments concerned with the Missouri River, Mni Sose finds this to be highly objectionable.

Further, the narrative description of this issue confuses the mystical with the spiritual. There is a common thread of spirituality underlying the cultures of the various Indian Nations of the Missouri River basin. Indeed, it is this spirituality which gives life to native concerns with the spirits of their ancestors, and in fact to their relationship with the earth, and to the Missouri River itself.

The Corps references religious and spiritual motives as "mystic." That is ridiculous and insulting. Webster's Dictionary defines "mystic" as "involving mysterious powers, secret rites or teachings . . . occult." This is a completely inaccurate description of the basis of tribal concerns with the protection of native cultural resources. Substantively, it reflects that the entire approach of the Corps of Engineers toward native cultural resources is based upon flawed information, inadequate consultation, and a misunderstanding about the very resources to be protected.

The only manner in which this most critical issue may get adequately addressed remains close consultation and coordination with the tribal governments. The Corps should undertake a

comprehensive study of native cultural resources along the Missouri River. This study should be in close consultation with the Tribes. Upon surveying these resources, the Corps should determine how to best protect the priority sites, and only then select a preferred alternative for Missouri River operations.

Program Goals and Objectives:

The Missouri River Basin Tribal Master Manual Program's goal is to assist 13 Tribes in the development of tribal sensitive Master Water Manual Control "alternatives" and to provide training to the Tribes in cultural resource and sacred sites protection and management.

The first goal of the program is to assist the 13 main stem Tribes in assessing the environmental and economic impacts of the Missouri River Master Water Control Manual PDEIS on tribal environments and tribal economic development planning. The program establishes the following objectives to accomplish this goal:

1. Convene an intertribal forum to assess the impacts of the Army Corps of Engineer's operation of the Missouri River on tribal lands and water resources and prioritize environmental areas.
2. Convene tribal meetings to review economic development plans that include the waters of the Missouri River.
3. Convene symposiums with the Tribes, local offices, and officials of the Corps of Engineers to address Missouri River operational issues at the local level.
4. Convene tribal meetings with various federal agencies to develop interagency projects that reduce, minimize, or eliminate environmental degradation on tribal lands from the operation of Missouri River.
5. Assist the Tribes in developing a tribally sensitive alternative for the Missouri River Master Manual for submission to the Army Corps of Engineers and Council of Environmental Quality.

The second goal of the program is to provide training to the Tribes in cultural resource and sacred sites protection and management. The program will train tribal staffs in training in appropriate federal laws and policies for cultural resource protection, cultural resource site identification, and protection and management systems for cultural resource preservation and protection.

To accomplish the culture resource protection and management goal, the program has established the following objectives:

1. Convene tribal meetings to review appropriate federal culture preservation laws, policies, and regulations.

2. Convene symposiums with the Army Corps of Engineers, state historical preservation officers, and other appropriate local, state, and federal officials to address local cultural resource issues.
3. Provide training sessions to tribal staffs to identify culturally-sensitive areas and sacred sites, develop tribal data banks on cultural resources, and review tribal management systems for cultural resource protection and preservations.

The program will provide tribal training curriculums, a tribal network for master manual development, an electronic communication network for tribal and federal staff, a tribal alternative for inclusion in the Missouri River Master Water Control Manual, and a tribally based protocol for cultural resource and sacred site protection and management.

The program will be staffed by a Program Director, Tribal Liaison, Information Systems Manager, Computer Specialist, Researcher, and Research Assistant, located at the Mni Sose offices at Rapid City, South Dakota.

The following 12-month budget includes tribal staff attendance at meetings and is based on the Coalition's previous training and computer equipment provided to the Tribes.

**MNI SOSE INTERTRIBAL WATER RIGHTS COALITION
MISSOURI RIVER BASIN TRIBAL MASTER MANUAL PROGRAM
YEAR ONE BUDGET**

Personnel Costs	\$89,500
Fringe Benefits (29%)	\$25,955
Staff Travel	\$10,000
Office Supplies (\$250 X 12 Mos.)	\$3,000
Equipment	\$0
Contractual	\$0
Other Direct Costs	
Tribal Staff Travel (6 mtgs. X \$5,000 per Mtg.)	\$30,000
Consultant Services	\$10,000
Phone/Fax/Computer Link (\$400 per mo. X 12 Mos.)	\$4,800
Copy Costs (\$300 per mo. x 12 Mos.)	\$3,600
Postage (\$350 per. mo. X 12 Mos.)	\$4,200
Meeting Cost (\$1000 per mtg. X 6 Mtgs.)	\$6,000
Rental Costs (\$934 per mo. X 12 mos.)	\$11,316
Utilities (\$300 per mo. X 12 mos.)	<u>\$3,600</u>
 Total Program Costs	 \$201,971

BUDGET JUSTIFICATION

This budget is presented to serve 13 Tribes located on the mainstem of the Missouri River.

The program will provide training, technical assistance, and technology and information transfer to 13 Tribes in Energy Planning and Management Program (EPAM) development, hydropower energy issues, hydropower governance, and tribal utility development.

TRIBAL CONTRIBUTION: The Tribes participating in the Missouri River Master Manual Program will contribute tribal leader and staff time to actively participate in training sessions and symposia to engage in issue discussions.

This budget does not contain monetary amounts for the tribal contribution. However, the tribal contribution is substantial in the operation of the program.

A. PERSONNEL:

1. In order to ensure that all objectives and activities are met, a Project Director, Tribal Liaison, Information Systems Manager, Computer Specialist, Researcher and Research Assistant will be employed for the program. The salaries are commensurate with other similar federal and

tribal positions in the Northern Plains region. Salaries and wages are established by the Board of Directors.

2. Fringe Benefits are established by the Board of Directors' Personnel Policies and comply with existing federal and state laws. Fringe benefits are calculated as follows:

FICA	7.65 %
Workers Comp.	1.15 %
Unemployment Insurance	2.5 %
Retirement plan	13.85 %
Disability Insurance	3.85 %

Total fringe benefits at a rate of 29% are established by the Board of Directors.

B. STAFF TRAVEL:

The Program staff will conduct site visits to tribal headquarters to conduct data collections, convene program meetings, and coordinate with local federal representatives.

C. SUPPLIES:

The program will utilize consumable office supplies to accomplish the goals of the program. Supplies will also be utilized for record keeping and maintenance of program files as required by the federal program.

D. TRIBAL STAFF TRAVEL:

Participating tribal staff and leaders, serving as tribal representatives for their respective Tribes, will attend training sessions and symposia convened by the program. Due to restrictive tribal budgets the program will provide this expense to the Tribes.

The tribal travel costs include travel, per diem, and lodging for tribal staff and leaders to attend the meetings.

E. CONSULTANT SERVICES:

The Program will serve 13 Tribes located on the mainstem of the Missouri River with training, technical assistance, and analysis of water resource issues and management systems. The Coalition will conduct six interrelated objectives during the operation of the program. Most of the objectives require technical expertise on an as-needed basis, resulting in a cost-effective strategy of employing highly-skilled consultants for a minimum amount of time. The Coalition has considered the employment of these professionals on a full-time employment basis, however, the objective tasks do not warrant full-time employment services relative to the enormous costs of full-time employment. The Coalition will therefore employ consultants on an as-needed basis for the estimated number of hours detailed at the end of this section.

F. TELEPHONE, FAX, COMPUTER LINK:

The telephone, fax, and computer link costs include maintenance of a telecommunication system with the Coalition and 13 Tribes.

G. COPY COSTS:

The Coalition provides water resource information and natural resource technology to 13 Tribes and other federal agencies on a regular basis. The cost of copying informational packets is included in this budget.

H. POSTAGE:

Postage charges include postage and handling charges to provide information to 13 tribal leaders and staff regarding water resource information.

I. MEETING COSTS:

Meeting costs include equipment rentals, facility rental, and other costs associated with conducting meetings with Tribes and federal agencies in the Missouri River Basin, in addition to a symposium.

J. RENTAL COSTS:

Rental costs include rental of a 2,500 square foot business facility in Rapid City, South Dakota. The office spaces houses six individual offices, a large training area, one small conference room record and file storage, and employee parking.

L. UTILITIES:

Utility costs include electricity, heat, and water for a 2,500 square foot business facility in Rapid City, South Dakota.

Executive Director:
Richard Bad Moccasin

Member Tribes:
Aminiboiné & Sioux Tribes of Fort
Peck, Poplar, Montana

Blackfeet Tribe
Browning, Montana

Cheyenne River Sioux Tribe
Cape Butte, South Dakota

Chippewa Cree Tribe
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe
Fort Thompson, South Dakota

Eastern Shoshone Tribe
Fort Washakie, Wyoming

Flandreau Santee Sioux Tribe
Flandreau, South Dakota

Fort Belknap Tribes
Harlem, Montana

Kickapoo Tribe in Kansas
Horton, Kansas

Lower Brule Sioux Tribe
Lower Brule, South Dakota

Northern Arapaho Tribe
Fort Washakie, Wyoming

Northern Cheyenne Tribe
Lame Deer, Montana

Oglala Sioux Tribe
Pine Ridge, South Dakota

Omaha Tribe
Macy, Nebraska

Ponca Tribe of Nebraska
Nebraska, Nebraska

Prairie Band of Potawatomi
Mayetta, Kansas

Rosebud Sioux Tribe
Rosebud, South Dakota

Sac & Fox Nation of Missouri
Reserve, Kansas

Santee Sioux Tribe
Nebraska, Nebraska

Sisseton-Wahpeton Sioux Tribe
Agency Village, South Dakota

Spirit Lake Tribe
Fort Totten, North Dakota

Standing Rock Sioux Tribe
Fort Yates, North Dakota

Three Affiliated Tribes
New Town, North Dakota

Turtle Mt. Band of Chippewa
Bismarck, North Dakota

Winnebago Tribe of Nebraska
Winnebago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni Sose Intertribal Water Rights Coalition, Inc.
P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

April 30, 1999

Rosemary C. Hargrave, M.S.
Missouri River Master Manual Project Manager
US Army Corps of Engineers
USAED-Northwestern
CENWD-MR-ET-R
12565 West Center Road
Omaha, NE 68144-3869

RE: Mni Sose Intertribal Water Rights Coalition's Program

Dear Ms. Hargrave:

Thank you for your review of the Mni Sose Intertribal Water Rights Coalition's proposal to address cultural resource identification, management, and training needs for the 13 mainstem Tribes of the Missouri River.

The Program will provide cultural resource identification and protection training for two staff members from each of the 13 mainstem Tribes. The training will be open to other Missouri River Basin Tribes, which will provide the opportunity for leveraging the program activities to provide training to a greater number of tribal members.

The Program training will utilize an interagency approach to cultural resource identification and protection. The Army Corps of Engineers will collaborate in the design and development of the training curriculum in cooperation with Indian spiritual leaders, tribal natural resource administrators, and the Coalition. The training faculty will be selected from the Army Corps of Engineers, National Park Service, Bureau of Indian Affairs, and other appropriate agencies including tribal elders.

The program will conduct six meetings which will include a review of the current operations and identification of outstanding issues. The meetings should be held at selected sites on the Missouri River, which would provide for participation by local Army Corps of Engineers' managers and administrators. The six sessions will consist of:

<u>Meeting Number</u>	<u>Topic</u>
Meeting 1	Review & Identification of Present Issues
Meeting 2	Basic 101: Cultural Resource Identification
Meeting 3	Basic 102: Cultural Resource Protection
Meeting 4	Basic 103: Appropriate Laws & Regulations
Meeting 5	Cultural Resource Management Systems
Meeting 6	Development of Methods to Resolve Issues

Mni Sose Intertribal Water Rights Coalition's Program
April 30, 1999

Page 2

The program will provide basic training and cultural resource protection program development in the first year of operation. It is assumed that during the training and discussions that opportunities will arise that will assist in complementing the Corps and tribal relationships developed during this period.

The original proposed budget, which includes training for 13 Tribes accurately budgets for the proposed delivery of services. The budget, however, does not reflect costs associated with meetings along the Missouri River.

The Mni Sose Intertribal Water Rights Coalition appreciates your review of this proposal and remains available to discuss the proposal in detail.

Please call Mr. Woody Corbine, Projects Coordinator, at (605) 343-6054 if further documentation is necessary.

Sincerely,


Richard Bad Moccasin
Executive Director



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Aberdeen Area Office
115 Fourth Avenue S.E.
Aberdeen, South Dakota 57401

IN REPLY REFER TO:

Natural Resources
MC-301

MAY 5 1999

Brigadier General Robert H. Griffin
U.S. Army Corps of Engineers
Northwestern Division
220 Northwest 8th Avenue
Portland, Oregon 97209-3589

Dear Brigadier General Griffin:

At a Tribal Summit held at Rapid City, South Dakota, February 23-24, 1999, the U.S. Army Corps of Engineers (Corps) made several commitments regarding the Environmental Impact Statement (EIS) for the Master Water Control Manual for the Missouri River. These commitments stem directly from Executive Order 13084 and the American Indian and Alaska Native Policy of the Department of Defense, both of which require the Corps to substantively involve tribes in the decision-making process. Your Master Manual Team strongly supported the government-to-government consultation process and made the following promises:

1. Consult with all twenty-eight Missouri Basin Tribal Councils individually regarding the EIS process, the range of alternatives considered, and particular tribal issues.
2. Provide technical and possibly financial support to individual tribes and the Mni Sose Intertribal Water Rights Coalition to develop a "preferred tribal alternative."
3. Include an expanded analysis of tribal background, impacts and concerns within the main body of the upcoming Draft EIS, rather than relegating the material to an appendix.

Executive Order 13084 and Corps Policy requires "meaningful and timely" consultations with the tribes. To date, none of the promised meetings have materialized, nor, to our knowledge, has any technical and financial support been provided for development of tribal alternatives. As a result, it is very doubtful tribal input can be collected and analyzed for inclusion in the Draft EIS scheduled for October of this year.

As your Project Manager insisted, the Corps should be judged, not on the breadth of its promises, but on the responsiveness and appropriateness of its actions. The selection and publication of a preferred alternative in the Draft EIS prior to tribal consultation and input would be especially unresponsive and inappropriate. These concerns were raised but unresolved at the Summit.

A1-401

We believe the schedule will need to be reconsidered to allow for significant and substantive tribal consultations, thereby meeting Corps commitments and obligations. We also believe meaningful involvement of the tribes at this stage will ultimately facilitate completion of the Master Manual revision.

The Summit served to reiterate and highlight tribal concerns with the Master Manual process. From this point of view, it should be considered a success. We look forward to working with you and your staff to resolve these issues in light of the significant commitments made.

Sincerely,



Cora L. Jones
Area Director

cc: Executive Director, Mni Sose Intertribal Water Rights
Coalition
Area Director, Bureau of Indian Affairs, Billings Area Office
Area Director, Bureau of Indian Affairs, Anadarko Area Office
Administrator, U.S. Environmental Protection Agency,
Region 7
Administrator, U.S. Environmental Protection Agency,
Region 8

Executive Director:
Robert S. Muckman

Member Tribes:
Seminole & Sioux Tribes of Fort
Peck, Poplar, Montana

Blackfeet Tribe
Browning, Montana

Cheyenne River Sioux Tribe
Eagle Butte, South Dakota

Chippewa Cree Tribe
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe
Fort Thompson, South Dakota

Eastern Shoshone Tribe
Fort Washakie, Wyoming

Flandreau Santee Sioux Tribe
Flandreau, South Dakota

Fort Belknap Tribes
Harlem, Montana

Kichapoo Tribe in Kansas
Horton, Kansas

Lower Brule Sioux Tribe
Lower Brule, South Dakota

Northern Arapaho Tribe
Fort Washakie, Wyoming

Northern Cheyenne Tribe
Lame Deer, Montana

Delala Sioux Tribe
Pine Ridge, South Dakota

Omaha Tribe
Lucy, Nebraska

Omaha Tribe of Nebraska
Ogallala, Nebraska

Osage Band of Potawatomi
Ayerly, Kansas

Osage Sioux Tribe
Osage, South Dakota

Osage & Fox Nation of Missouri
Osage, Kansas

Santee Sioux Tribe
Osage, Nebraska

Sisseton-Wahpeton Sioux Tribe
Sisseton Village, South Dakota

Sioux Lake Tribe
Sioux Lake, North Dakota

Standing Rock Sioux Tribe
Sitting Bull, North Dakota

Three Affiliated Tribes
Bismarck, North Dakota

Upper Missouri Band of Chippewa
Sisseton, North Dakota

Winnebago Tribe of Nebraska
Winnebago, Nebraska

Yankton Sioux Tribe
Yankton, South Dakota

Mni Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

May 7, 1999

Rosemary C. Hargrave, M.S.
Missouri River Master Manual Project Manager
US Army Corps of Engineers
USAED-Northwestern
CENWD-MR-ET-R
12565 West Center Road
Omaha, NE 68144-3869

Re: Tribal Alternative

Dear Ms. Hargrave:

The Mni Sose Intertribal Water Rights Coalition submits, for your consideration and approval, a project proposal to address tribal issues encompassed within the Army Corps of Engineers' Preliminary Draft Environmental Impact Statement (PDEIS) for the Missouri River Master Water Control Manual.

The PDEIS includes a variety of issues and implications for Missouri River Drainage Tribes with far-reaching impacts on tribal environment and cultural resource protection. The proposed project will provide the Army Corps of Engineers the opportunity to consider these issues from the tribal perspective.

The proposed project goals are to:

- ▶ identify the basic elements of the Army Corps of Engineers' PDEIS that impact Missouri River Drainage Tribes;
- ▶ assess the Army Corps of Engineers' PDEIS impacts on wildlife, erosion, computer modeling, and hydrological assumptions on Indian lands; and
- ▶ identify tribal cultural resource protection strategies incorporated in the PDEIS and initiate a protection plan based on tribal values and mores.

The project proposes to conduct the tasks and activities as outlined in the Project Work Plan (Schedule A). The Project Work Plan is designed to coincide with the Mni Sose Intertribal Water Rights Coalition's Board of Director's Meeting in June 1999.

The project will be served by the Project Leader, Research Assistant, and Computer Specialist. The Project Leader will provide general supervision of the project and will be responsible for the completion of tasks and assignments.

The Research Assistant and Computer Specialist will provide administrative support for the project and will assist in meeting arrangements, travel schedules, and information transfers between the technical team and member Tribes.

The Project Leader will assemble a technical team consisting of a Legal Counsel, Hydrologist, Environmental Researcher, and Cultural Specialist. The team will conduct the review and analysis of the existing PDEIS and produce the Tribal Alternative to the PDEIS.

The Project Budget, Schedule B of this report, includes expenses and costs for a four-month period. Mni Sose Intertribal Water Rights Coalition requests that the Army Corps of Engineers utilize the advance payment system for this project due to the short duration of the project. The Coalition will provide monthly financial reports on the project and will comply with other reporting requirements of the Army Corps of Engineers.

On behalf of the Mni Sose Intertribal Water Rights Coalition Board of Directors, I thank you for your consideration of this proposal. Please contact me at the address above or call (605) 343-6054 if additional information is necessary to process this request.

Sincerely,


Richard Bad Moccasin,
Executive Director

enc: Schedule A-Project Work Plan
Schedule B-Project Schedule

cc: David Vader, Tribal Liaison, ACOE
Rhonda Azure, Mni Sose Treasurer

**MNI SOSE INTERTRIBAL WATER RIGHTS COALITION
SCHEDULE A
PROJECT WORK PLAN**

Objective Tasks and Activities	Start Period	End Period	Team Members Responsible	Deliverables or Evaluation Measurement
The Technical Team will convene a meeting to review the current PDEIS and identify tasks and schedules.	Program Month One	Program Month One	Project Leader Legal Counsel Hydrologist Environmental Res. Cultural Specialist	1. Project Task List 2. Research outline 3. Project Schedule
Technical Team will meet with the ACOE scientists and technical staff for a review of PDEIS processes and techniques.	Program Month One	Program Month One	Project Leader Legal Counsel Hydrologist Environmental Res. Cultural Specialist	1. Meeting Minutes 2. Contact lists 3. Technical Data requests 4. ACOE PDEIS Schedule
Technical Team will develop a preliminary tribal PDEIS research list for submission to the Tribes and review by the ACOE.	Program Month One	Program Month One	Project Leader Research Assist. Computer Spec. Legal Counsel Hydrologist Environmental Res. Cultural Specialist	1. Tribal Research List 2. Tribal Contact List.
Technical Team will draft a Tribal alternative to the PDEIS.	Program Month Two	Program Month Two	Project Leader Research Assist. Computer Spec. Legal Counsel Hydrologist Environmental Res. Cultural Specialist	1. Tribal Comments and recommendations on research 2. Draft Tribal Alternative
Technical Team will submit the draft of the Tribal Alternative to the PDEIS to the Coalition's Board of Directors and Tribal Leaders for review and approval.	Program Month Two	Program Month Two	Project Leader Research Assist. Computer Spec. Legal Counsel Hydrologist Environmental Res. Cultural Specialist	1. Tribal Comments and recommendations on the draft Tribal Alternative for the PDEIS. 2. Board of Director's Resolution
The Technical Team will finalize the Tribal Alternative to the PDEIS and submit to the appropriate Federal Agencies.	Program Month Three	Program Month Four	Project Leader Research Assist. Computer Spec. Legal Counsel Hydrologist Environmental Res. Cultural Specialist	1. Tribal Comments and recommendations on the draft Tribal Alternative for the PDEIS 2. Board of Director's Resolution

**MNI SOSE INTERTRIBAL WATER RIGHTS COALITION
SCHEDULE B
PROJECT BUDGET**

The Project will be provided access to the Coalition's equipment, electronic network, and office space. The project will serve 27 Tribes in the Missouri River Drainage.

The Coalition requests advance payment for the project.

Total Personnel Costs	\$3,999
Staff Travel	\$500
Supplies	\$50
Technical Team	\$20,000
Meeting Costs	<u>\$450</u>
Total Project Costs	\$24,999

Executive Director:
Richard Bad Moccasin

Grand & Tribes:
Arapaho & Sioux Tribes of Fort
Tark, Poplar, Montana

Blackfoot Tribe
Browning, Montana

Cheyenne River Sioux Tribe
Bagle Butte, South Dakota

Chippewa Cree Tribe
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe
Fort Thompson, South Dakota

Eastern Shoshone Tribe
Fort Washakie, Wyoming

Andrews Station Sioux Tribe
Andrews, South Dakota

Fort Belknap Tribes
Gardiner, Montana

Ichapoo Tribe in Kansas
orton, Kansas

Lower Brule Sioux Tribe
Lower Brule, South Dakota

Northern Arapaho Tribe
Fort Washakie, Wyoming

Northern Cheyenne Tribe
Fort Deer, Montana

Pine Ridge Sioux Tribe
Pine Ridge, South Dakota

Quapaw Tribe
Cody, Nebraska

Quota Tribe of Nebraska
Quota, Nebraska

Quine Band of Pottawatomie
Quetta, Kansas

Redbud Sioux Tribe
Redbud, South Dakota

Red Fox Nation of Missouri
Red Fox, Kansas

Red Lake Sioux Tribe
Red Lake, Nebraska

Red-Walshpeton Sioux Tribe
Red Wolf Village, South Dakota

Red Lake Tribe
Trotter, North Dakota

Redding Rock Sioux Tribe
Red Lake, North Dakota

Red Affiliated Tribes
Trotter, North Dakota

Red Mt. Band of Chippewa
Trotter, North Dakota

Redbago Tribe of Nebraska
Redbago, Nebraska

Red Sioux Tribe
Red Lake, South Dakota

Mni Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

MEETING ON THE ARMY CORPS OF ENGINEERS REVISED DRAFT ENVIRONMENTAL IMPACT STATEMENT

MAY 13 - 14, 1999
RAPID CITY, SD

PURPOSE: The purpose of the meeting is to review and discuss the ACOE Revised Draft Environmental Impact Statement

Location: Mni Sose Office, 514 Mt. Rushmore Rd.

AGENDA

Thursday, May 13, 1999:

9:00 a.m.- Welcome & Introductions & Opening Remarks
Richard Bad Moccasin, Executive Director
Peter Caposella, Coalition Technical Team Leader
Mike Watson, Coalition Technical Team Member

10:00 a.m.- Opening Remarks & Presentation by ACOE Staff,
Rose Hargrave, Project Manager & Technical Staff Member

12:00 p.m.- Lunch: On Your Own

1:30 p.m.- Mni Sose Response to ACOE Presentation
Question & Answer Session

3:00 p.m.- Mni Sose Presentation on History of the Coalition &
ACOE regarding the PDIES

Richard Bad Moccasin, Executive Director

Question & Answer Session

4:00 p.m.- Adjourn

May 14, 1999:

**9:00 a.m. - Mni Sose Master Manual Preliminary Draft
Environmental Impact Presentation**

Mni Sose Technical Team Members:

Peter Caposella, Mike Watson

Gary Collins, Tom Escarcega & Jim Stone

11:30 a.m. - Discussion: Question & Answer Session

12:00 p.m. - Adjourn

**Meeting on the ARMY CORPS of ENGINEERS'
REVISED DRAFT ENVIRONMENTAL IMPACT STATEMENT**

**MNI SOSE - OFFICE
RAPID CITY, SD
MAY 13 AND 14, 1999**

The following Statement of facts were made to the conference participants.

By Edgar Bear Runner, Oglala Lakota Nation, Porcupine, South Dakota *EBR*

A treaty is a contract between two or more sovereign nations.

The U.S. Constitution Article 6. Declares that treaties are "The Supreme Law of the land."

Treaties are superior to state laws and state constitution and are equal to laws passed by Congress.

The Great Sioux Nations 1851 and 1868 Treaty with the United States of America were the accepted method by which relations were conducted.

The U.S. Supreme Court has expressly held that an Indian Treaty is "not a grant of rights to the Indians, but a grant of rights from them."

Today the Indigenous people from the Oglala Lakota Nation can exercise any basic human rights not inconsistent the principles of the 1851 and 1868 Treaties, The indigenous people are also protected by and afforded all of Federal rights guaranteed by and through the U.S. Bill of Rights.

Treaty Laws predate the constition of the state of South Dakota.

Any present and future land discussions and land transfers of Corp of Engineers lands must include the initial consultation with all of the tribes in South Dakota.

The 1851 and 1868 Fort Laramie Treaty made between the Great Sioux Nation and the United States as America remains in tact as legal binding document.

Executive Director:
Richard Bad Moccasin

Member Tribes:
Arapahoe & Sioux Tribes of Fort
Percy, Poplar, Montana

Blackfeet Tribe
Browning, Montana

Cheyenne River Sioux Tribe
Eagle Butte, South Dakota

Chippewa Cree Tribe
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe
Fort Thompson, South Dakota

Eastern Shoshone Tribe
Fort Washakie, Wyoming

Flandreau Santee Sioux Tribe
Flandreau, South Dakota

Fort Belknap Tribes
Harlem, Montana

Kickapoo Tribe in Kansas
Horton, Kansas

Lower Brule Sioux Tribe
Lower Brule, South Dakota

Northern Arapaho Tribe
Fort Washakie, Wyoming

Northern Cheyenne Tribe
Lame Deer, Montana

Oglala Sioux Tribe
Pine Ridge, South Dakota

Omaha Tribe
Omaha, Nebraska

Omaha Tribe of Nebraska
Nebraska, Nebraska

Osage Band of Potawatomi
Osage, Kansas

Rosebud Sioux Tribe
Rosebud, South Dakota

Sac & Fox Nation of Missouri
Reserve, Kansas

Santee Sioux Tribe
Nebraska, Nebraska

Sisseton-Wahpeton Sioux Tribe
Sisseton Village, South Dakota

Spirit Lake Tribe
Fort Totten, North Dakota

Standing Rock Sioux Tribe
Fort Yates, North Dakota

Three Affiliated Tribes
New Town, North Dakota

Turtle Mt. Band of Chippewa
Newcourt, North Dakota

Xinnebago Tribe of Nebraska
Xinnebago, Nebraska

Yankton Sioux Tribe
Yankton, South Dakota

Mni Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

May 24, 1999

Rosemary C. Hargrave, M.S.
Missouri River Master Manual Project Manager
US Army Corps of Engineers
USAED-Northwestern
CENWD-MR-ET-R
12565 West Center Road
Omaha, NE 68144-3869

Dear Ms. Hargrave:

I thank you for your participation in the Mni Sose Intertribal Water Rights Coalition's technical team meeting on May 13 and 14, 1999, to discussed preferred alternatives to the Master Manual's PDEIS.

Enclosed, for your review, are minutes from the meeting. Please contact the Coalition should you have changes to the minutes.

Contrary to what was discussed at the meeting, the Mni Sose technical team will not meet in Omaha prior to the Coalition's June 16-18, 1999, Board of Directors' meeting. However, I will contact you when the Technical Team members are ready to schedule the Omaha meeting.

Again, I appreciate the information and assistance you are able to provide as the Coalition continues its Tribal Issues Study of the Master Manual's PDEIS.

Sincerely,

Richard Bad Moccasin
Richard Bad Moccasin
Executive Director

enc.

**Mni Sose Intertribal Water Rights Coalition's Meeting Minutes
on the Army Corps of Engineers' Revised Draft Environmental Impact Statement
May 13 and 14, 1999
Rapid City, South Dakota**

May 13, 1999

Present: Richard Bad Moccasin, Executive Director/Mni Sose Coalition
Peter Capossela, Technical Team Member/Mni Sose Coalition (present 5-14)
Gary Collins, Deputy Tribal Water Engineer/Northern Arapaho Tribe
Tom Escarcega, Natural Resource Director/Fort Peck
Rose Hargrave, Northwestern Division/Army Corps of Engineers
Chuck Hillerson, Northwestern Division/Army Corps of Engineers
Peg O'Bryan, Northwestern Division/Army Corps of Engineers
Kimberly Oldham, Kansas City District/Army Corps of Engineers
Jim Stone, Biologist/Yankton Sioux Tribe
Mike Watson, Technical Team Member/Mni Sose Coalition (present 5-13)

Richard Bad Moccasin said at the Mni Sose Board of Directors' meeting held in June 1997, the Board approved a Strategic Planning Document for 1997-2002. The number one issue in the strategic planning document is the Master Manual/PDEIS.

The Coalition has received a grant from the Army Corps of Engineers in the amount of \$25,000 to develop a tribal master manual alternative. Richard said the Board of Directors instructed the Mni Sose Technical team to provide a draft of the alternative at the June 16-18, 1999, Board of Directors' meeting.

Mike Watson: Economic development modeling has been in place for awhile. A continuing concern for Tribes is that the models do not properly articulate the difference between the states economies and tribal economies. Work needs to be done on the impacts of the operation of the Missouri River reservoirs on the Indian reservations in order to define what the water supply impacts are in economic terms; what the recreation impacts are in economic terms; and what the hydropower impacts are in economic terms. In these economic variables, we should be able to combine with cultural work and biologist's work on fisheries and arrive at a sound document that represents the member Tribes of the Coalition. There is a need for an Indian economic component in a *regional* analysis as opposed to a national economic development, which would be different than what the Corps has done up to this point. The regional analysis could be a 12 to 18-month effort.

Richard Bad Moccasin: Early on, Tribes initially expressed a concern about the timeframe of the PDEIS and requested an extension.

Rose Hargrave: Consultation is ongoing well beyond the Final DEIS. What's difficult is that the ACOE is under a timetable that's approved by headquarters that Omaha can't change. The Army Corps intends to meet with each Tribe. The ACOE will also hold informational meetings. Col. Meuleners' term has been extended so he will be able to attend the meetings. As the Corps works on the RDEIS, they are actively requesting comments from the Tribes as to what the preferred alternative should be. The Corps, realizing the EIS is not particularly tribal friendly, has committed to rewriting the EIS and do the analyses that haven't been done (e.g., cultural, economic).

Current Master Manual Schedule

- ▶ Preliminary Revised Draft EIS (PRDEIS)--August 1998
- ▶ PRDEIS Tribal & Public Coordination Period--January 1999

- Revised Draft EIS (RDEIS)--October 1999
- RDEIS Tribal & Public Comment Period--March 2000
- Final EIS--December 2000
- Washington Level Review--May 2001
- Record of Decision (ROD)--July 2001
- Revise Master Manual--July 2001
- Develop AOP--December 2001
- Implement Selected Plan--March 2002

Mike Watson: The workgroup should work on a schedule to develop a tribal alternative that may be different than the ACOE's schedule. Differences in preferred alternatives from each Tribes should be identified and presented in a way that makes sense to them. A tribal document should be completed by March 2001 that would be a product in the review b/w the publishing of the Final EIS and the Washington-level review before the Record of Decision. Some intermediate steps would take place to put something on file before the October 1999 date which would be the document prepared for the June 17 Board meeting. Mike would like access to the information that Chuck Hillerson has in order to develop a solid tribal position together.

The Army Corps needs to have that tribal documentation to complete the Final EIS in December 2000 in order to provide one that is relevant to the Tribes.

Jim Stone (economic impacts of erosion and lost value from ag land and ag returns): The Yankton Sioux Tribe is dealing with a loss of 542 acres of land at a value of \$11 million in lost income due to the Fort Randall dam. The lost acreage was very fertile bottom land which the Tribe irrigated and farmed and which has brought lease money to the Tribe. Looking at Corps documents on erosion below the Fort Randall dam, about 2,500 acres were eroded by the Fort Randall dam. Of that, there was 472 acres of tribal land. There is a very limited view by the Corps on economic development which also ties into cultural losses. Tribes should also be reviewing pool levels and at what level is it the most beneficial to the Tribes. Tribes will need access to the economics of the downstream people.

The Yankton Sioux Tribe's compensation claim, which may be introduced this week by Senator Daschle, includes the claim for the erosion. Congress is recognizing that as a loss to the Yankton Sioux Tribe. Therefore, the Tribe may be compensated for the \$11 million, including erosion.

Peg O'Bryan: The ACOE needs to identify mitigation measures to put in place to protect land from erosion. However, the ACOE needs a policy change from Congress to provide for those measures. The measures can be identified in the EIS of the critical reaches, but the EIS cannot provide for the changes. Measures to prevent future erosion also need to be examined. If all of the Tribes have compensation claims on the table, it lays the groundwork for future funding sources.

Rose Hargrave: A good way for Tribes to help themselves in the Master Manual process is to identify a preferred alternative, which lays the groundwork for the Corps. Tribes also want the Missouri River Basin Association to endorse that alternative to get as much force as possible behind that recommendation.

The ACOE will only be analyzing, impactwise, the incremental impact of cultural resources, but there is no reason they can't portray the larger picture.

Tribes are interested in the impacts from the construction of the dam to the present day and what happens when Tribes go from the status quo to a preferred plan.

Tom Escarcega (on cultural resources): During last year's spring rise, a skeleton of a small child was discovered which was over 150 years old and was believed to be a tribal member. Mostly non-Indians are receiving the benefits of bank stabilization. Tribes have not received the benefits yet, even after being promised certain benefits for electricity when the dams were established.

Edgar Bear Runner, Oglala Sioux Tribe: A treaty is a contract between two or more sovereign nations. The U.S. Constitution, Article VI, declares that treaties are "The Supreme Law of the Land." Treaties are superior to state laws and state constitutions and are equal to laws passed by Congress. The Great Sioux Nation's 1851 and 1868 treaties with the United States of America were the accepted method by which relations were conducted. The U.S. Supreme Court has expressly held that an Indian Treaty is "not a grant of rights to the Indians, but a grant of rights from them." Today, the indigenous people from the Oglala Lakota Nation can exercise any basic human rights not inconsistent with the principles of the 1851 and 1868 treaties. The indigenous people are also protected by and afforded all of the Federal rights guaranteed by and through the U.S. Bill of Rights. Treaty laws predate the constitution of the state of South Dakota. Any present and future land discussions and land transfers of Corps of Engineers' lands must include the initial consultation with all of the Tribes in South Dakota. The 1851 and 1868 Fort Laramie Treaty made between the Great Sioux Nation and the United State of America remains in tact as a legal binding document. The Tribe is asking that justice be afforded to all of the parties to the treaty through the Mitigation Act and all the treaty lands in question be held in common trust for all the parties involved. The state should have never received treaty land. Treaty land should have gone back to the original and rightful legal owners.

Peg O'Bryan: The Corps is now in the process of scoping out what to do with the Mitigation Act. The Army Corps' general counsel is looking at the treaty issues.

Rose Hargrave: The preferred alternative that the Corps selects may not be identical to any single alternative that may come in. It will most likely be a hybrid of several alternatives. Ultimately, the Corps will select the preferred alternative before they even publish it which will emphasize consensus in the preferred alternative. Any alternative that is submitted would be run through the impact models. The results would be provided to the Tribes and reviewed with the technical staff.

MRBA has been looking at "depletion insurance": a situation where if the Tribes or whoever would ever consumptively deplete a certain amount of water, then the permanent pool would be lowered by some proportion, which has not yet been agreed upon.

MISSOURI RIVER MAINSTEM RESERVOIR SYSTEM

Environmental Resources

Riverine Fish (including pallid sturgeon)
Reservoir Fish
Terns & Plovers
Wetlands Habitat
Riparian Habitat
Historic Properties

Economic Uses

Flood Control
Irrigation
Hydropower
Navigation
Recreation
M& I Water Supply
Water Quality

MISSOURI RIVER MAINSTEM STORAGE ALLOCATIONS

Exclusive Flood Control	4.7 MAF
Annual Flood Control and Multiple Use	11.6 MAF
Carryover Multiple Use	39.0 MAF
Minimum During Recent Drought	40.9 MAF--December 1990

DEVELOPMENT OF ALTERNATIVES

Sixty-four alternatives were developed to test impact sensitivities of criteria in six categories:

- ▶ Permanent pool
- ▶ Navigation Guide Curves
- ▶ Non-navigation Service Levels in Droughts
- ▶ Intrasystem Regulation
- ▶ Service-level Changes for Fish and Wildlife
- ▶ Mississippi River Target

PERMANENT POOL OPTIONS

Exclusive Flood Control	4.7 MAF
Annual Flood Control and Multiple Use	11.6 MAF
Carryover Multiple Use	39.0 MAF

NON-NAVIGATION SERVICE LEVELS

- ▶ Service levels change from "navigation" service levels to "water supply" service levels during droughts as navigation months change to non-navigation months.
- ▶ Current targets are 12 kcfs winter, 9 kcfs spring/fall, and 9 kcfs summer.
- ▶ New targets (except FW20) are 12, 9, and 18 kcfs, respectively.

INTRASYSTEM REGULATION MODIFICATION FOR RESERVOIR YOUNG FISH PRODUCTION

3-Year cycle of Lake Level Changes

	Year 1	Year 2	Year 3
Fort Peck Lake	Float	Low	High
Lake Sakakawea	Low	High	Float
Lake Oahe	High	Float	Low

PRELIMINARY RDEIS ALTERNATIVES

- ▶ Eight representative alternatives were selected by the team from the initial set of 64 alternatives:
- ▶ Current Water Control Plan (CWCP)
- ▶ 3 alternatives with varying levels of conservation of water in the reservoirs in droughts--C18, C31, and C44
- ▶ 3 alternatives that provide additional fish and wildlife benefits--FW10, FW15, FW20
- ▶ Mississippi River target alternative--M66

CURRENT WATER CONTROL PLAN

Alternative ID	CWCP
Permanent Pool	18 MAF
Navigation Guide Curves	Low
Non-navigation Service Levels	
▶ Winter	12 kcfs
▶ Spring/Fall	9 kcfs
▶ Summer	9 kcfs
Intrasystem Regulation	Balanced
Service Level Changes	None
Mississippi River Target	None

CONSERVATION ALTERNATIVES

<u>Resource/Use</u>	<u>C18</u>	<u>C31</u>	<u>C44</u>
	(%)	(%)	(%)
Missouri River			
Wetland Habitat	1	-1	4
Riparian Habitat	-2	-3	-5
Tern and Plover Habitat	24	39	34
Reservoir Young Fish Production	3	3	3
Cold Reservoir Fish Habitat	-1	5	15
Cold River Fish Habitat	3	5	8
Warm River Fish Habitat	-3	-9	-12
Native River Fish Physical Habitat	0	0	0
Historic Properties Index	1	-2	-11
Flood Control	-1	-1	-1
Water Supply	0	0	1
Hydropower	0	1	3
Recreation	0	4	6
Navigation	0	-5	-18
Total NED Economics	0	0	1
Interior Drainage	0	1	-1
Groundwater	-1	0	-2
Mississippi River	-1	-4	-6

FISH AND WILDLIFE ALTERNATIVES

<u>Resource/Use</u>	<u>C31</u>	<u>FW10</u>	<u>FW15</u>	<u>FW20</u>
	(%)	(%)	(%)	(%)
Missouri River				
Wetland Habitat	-1	2	3	4
Riparian Habitat	-3	-5	-6	-8
Tern and Plover Habitat	39	23	27	24
Reservoir Young Fish Production	3	0	0	-4
Cold Reservoir Fish Habitat	5	6	6	7
Cold River Fish Habitat	5	2	1	3
Warm River Fish Habitat	-9	-8	-5	6
Native River Fish Physical Habitat	0	1	2	4
Historic Properties Index	-2	-2	-2	-4
Flood Control	-1	-1	-1	-1
Water Supply	0	0	0	0
Hydropower	1	1	1	1
Recreation	4	3	3	0
Navigation	-5	-7	-9	-23
Total NED Economics	0	0	0	0
Interior Drainage	1	5	5	-3
Groundwater	0	1	2	-5
Mississippi River	-4	-1	-2	-9

MASTER MANUAL MODELS

Daily Flow Model-looks at storage	Environmental Models:
Economic Models	▶ Wetland Habitat
▶ Flood Control	▶ Riparian Habitat
▶ Navigation	▶ Tern & Plover Habitat
▶ Hydropower	▶ Reservoir Young Fish Production
▶ Recreation	▶ Cold Reservoir Fish Habitat
▶ Water Supply	▶ Cold River Fish Habitat
	▶ Warm River Fish Habitat
	▶ Native River Fish Habitat
	▶ Historic Properties Index

HISTORIC PROPERTIES ANALYSIS

- ▶ Impacts to sites dependent on lake level
 - ▶ Known sites in 8-foot zone of shoreline
 - ▶ Cumulative annual number of sites affected
- ▶ Did not analyze impacts from looting
- ▶ Analysis included Fort Peck, Sakakawea, Oahe
 - ▶ Lower 3 reservoir pool levels vary little among alternatives

SIMILARITIES OF EFFECT BY ALTERNATIVES STUDIED

- ▶ All alternatives involve fluctuating pools
- ▶ Any historic property adversely affected under one alternative will be affected under all other alternatives
- ▶ Variations of effect among alternatives are temporary
 - ▶ Erosion rates may be increased or slowed
 - ▶ Exposure and drying effects may be of greater or lesser duration
 - ▶ Only the average frequency and duration of specific effects vary among the alternatives
 - ▶ Over long period, ultimate effects will be similar
- ▶ Water management which decelerates adverse effects of some sites will accelerate effects elsewhere

COMPARISON OF ALTERNATIVES

- ▶ Impacts of each alternative on historic properties were determined by comparing an index value based on the number of months known sites are subject to shoreline erosion at the upper three lakes.
- ▶ The higher the index value, the less impact to known historic properties

SUMMARY

- ▶ All alternatives including the CWCP impact historic properties
- ▶ Alternatives C18 and M66 have the least impacts on historic properties
- ▶ Alternative C44 has the greatest impact on historic properties
- ▶ Providing additional spring/summer releases for fish and wildlife (FW10, FW15, FW20) has little impact on historic properties

May 14, 1999

Peter Capossela (insights from Washington, DC visit): The President talked to the tribal leadership about cost shares and ways to get around statutory requirements for costs shares for Tribes. They also discussed infrastructure development and ways to leverage more federal funds through bonding and other mechanisms not available right now.

The total Indian water rights for the Mni Sose member Tribes exceeds 7.7 MAF. Mni Sose already commented on this to the Army Corps in 1994. The language used in the 1994 EIS on Standing Rock depletion estimates on irrigation water was outrageous and a misuse of the information to the detriment of the Tribe. Water depletion estimates in the Missouri River should be included in the Master Manual to illustrate the impact of Indian water on the system. A comment to the previous EIS presented that the only Indian water rights that exist are quantified rights. The Corps has committed to rewriting that language and requested that Peter assist in developing language to include in the EIS regarding depletions.

Peg O'Bryan: If the Army Corps is going to operate the reservoirs for their authorized project purposes, the pool will fluctuate and will erode the sites. If Congress does not want the Army Corps to operate the system for its authorized project purpose for the protection of sites, the other project purposes won't be fulfilled. Can we look at ways to protect the sites in place?

The next meeting will be held on Wednesday, June 9, 1999, at 9:00 am in order to draft a document on the Master Manual for distribution at Mni Sose's next Board meeting in June.

Draft - For Board of Directors Review
June 17, 1999

Mni Sose Inter-Tribal Water Rights Coalition, Inc.

Comments for the U.S. Army Corps of Engineers

Missouri River Master Water Control Manual Preliminary Revised Draft EIS

1. Executive Summary

The Mni Sose Inter-Tribal Water Rights Coalition Inc. is very concerned with the Corps of Engineers Missouri River Master Water Control Manual. Mni Sose commented on the Preliminary Draft Environmental Impact Statement released by the Corps in July, 1993, and the Draft EIS released the following year. Mni Sose made a keynote presentation at the Corps of Engineers meeting in Omaha, Nebraska, on September 30, 1993, with representatives of four Tribes, ten states, and five federal agencies, and there was broad agreement that Indian reserved water rights should be incorporated in the Master Water Control Manual EIS.

The Corps released a *Preliminary Revised Draft EIS (PRDEIS)* in July, 1999. The PRDEIS dispensed with the Preferred Alternative, and contains a new set of Fish and Wildlife and Water Conservation alternatives, a Mississippi River alternative, and the Current Water Control Plan.

These alternatives were developed through a computer model, in which the Corps traced the water flows for each year it has operated the system, under the operational scheme for each alternative. Indian water rights were not considered in this model. The impacts of each alternative on Native American cultural resources are not adequately evaluated. Instead of engaging in the analysis required under NEPA, the Corps has delegated to the states and the special interest groups they represent the task of allocating water in drought years. There is unused water in the system that the Federal government should not allocate for any other than Tribal uses, but the Corps has washed its hands

of its Trust responsibility to the Tribes, and instead defers to water negotiations amongst the states.

The Corps of Engineers has announced that it shall release a Draft EIS in October, 1999, with a new Preferred Alternative, and plans to finalize the EIS in 2000. There has been no meaningful consultation with the Indian Nations on Missouri River operations. The existing draft documentation understates the magnitude of Indian water rights, and the effects of COE Missouri River operations on the Tribes.

The Corps of Engineers lacks adequate information on the Indian Tribes, in order to finalize an Environmental Impact Statement of this scope. The Corps should re-formulate its plan for NEPA compliance, and postpone completion of the EIS until there has been adequate data collected on the Indian Reservations within the affected environment.

Under NEPA, the Corps must compile and analyze the history, socioeconomic conditions, cultural resources and environmental baseline conditions of the affected Indian Tribes. Under the Executive Order on Environmental Justice, the Corps must propose plans to mitigate the impact of its operations on the Tribes, because of the disproportionate impact of its operations on Native American communities.

The Corps of Engineers should work with Mni Sose to compile and incorporate the requisite data into the Draft EIS. A multi-year plan should be developed and implemented to ensure that the Corps possesses and considers information about the Tribes that is required by NEPA.

If the Corps excludes the requisite information and analysis, the Indian Tribes of the Missouri River basin shall, with the assistance of Mni Sose, take all necessary and appropriate actions to ensure that the Corps of Engineers does not violate our rights under the National Environmental Policy Act.

2. Introduction

The Mni Sose Inter-tribal Water Rights Coalition consists of 27 Indian Nations located in the Missouri River basin, working together to protect our water rights, natural resources and Tribal sovereignty. The Army Corps of Engineers' Missouri River operations, through its Master Water Control Manual, impacts our land and water rights. Mni Sose remains very concerned with the

National Environmental Policy Act (NEPA) process currently underway by the Corps. Mni Sose submits these comments to the Army Corps of Engineers' Preliminary Revised Draft Environmental Impact Statement, dated August, 1998.

The Indian Nations of the Missouri River basin vary as much as the landscape itself. The Blackfeet Nation is located high in the Rocky Mountains near the Missouri's headwaters. The Chippewa-Cree Tribe of the Rocky Boys Reservation, and the Assiniboine and Gros Ventre Tribes of the Fort Belknap Indian Reservation are located high on the central Rocky Mountain plateau of north central Montana, surrounded on the south and west by mountain ranges and the Missouri and its tributaries..

Further downstream along the Missouri River, the Three Affiliated Tribes of the Fort Berthold Reservation and the various Tribes of the Great Sioux Nation lost land and riparian resources upon the construction of the six earthen dams on the main stem of the Missouri River. Downstream from these projects, the important water resources of the Winnebago, Omaha, Sac and Fox, Kickapoo and Pottawatomi Nations have been developed and utilized for barge traffic and the navigation industry.

Historically, our Tribal communities established camps and communities along the Missouri River and its tributaries. We relied on the water, shelter and riparian resources in the riverine environment to survive. Our ancestors are buried along these rivers from Montana's Milk River, all along the nearly 1,500 mile Missouri River main stem, to Kansas' Republican River.

The Master Water Control Manual affects these burial sites. It also affects the water supply for the exercise of the Tribe's reserved water rights.

As it is currently formulated, the Master Manual PRDEIS is a tool to justify the current Pick-Sloan program beneficiaries' profit margins, at the expense of the survival of the Indian Nations. Any preferred alternative selected based upon the analysis contained in the PRDEIS is rejected by Mni Sose. It violates the National Environmental Policy Act, National Historic Preservation Act, Executive Order No. 12898 on Environmental Justice, the Executive Order on Consultation with Indian Tribal Governments, and common sense.

3. Background - Indian Reserved Water Rights in the Missouri River Basin

The Indian Tribes of the Missouri River basin possess substantial water rights to the Missouri River, its tributaries and the basin's groundwater. This is very well established.

The U.S. Supreme Court has determined that when the Indian Tribes reserved rights to land, we similarly reserved the right to use that amount of water needed to survive and prosper on our Reservations. Winters v. United States, 207 U.S. 564 (1907). The Court held that "The power of the Government to reserve the waters (for the Indian Tribe) and exempt them from appropriation under the state laws is not denied and could not be..... the Government did reserve them.... and for a use which would be necessarily extended through the years." 207 U.S. 576.

Later in this century, when Indian reserved water rights were attacked by non-Indian water users in the Colorado River basin, the Supreme Court reconfirmed these principles. In Arizona v. California, the Court held that "when the United States created these reservations, or added to them, it reserved not only land but also the use of enough water from the Colorado to irrigate the irrigable portions of the reserved lands." 373 U.S. 546, 596 (1963).

Further, when scarce water resources are to be allocated, the courts have determined that under the *Winters Doctrine* "the Indians were awarded the paramount right regardless of the quantity remaining for the use of white settlers." United States v. Ahtanum Irrigation District, 236 F.2d 321, 327 (9th Cir. 1956).

Without question, notwithstanding the allocation of the waters of the Missouri River's main stem by the Army Corps of Engineers, and of the Missouri's tributaries by the U.S. Bureau of Reclamation, these principles apply in the Missouri River basin. Indian water rights are "prior and paramount" to non-Indian water rights derived under state law. Arizona v. California. F. Cohen, Handbook of Federal Indian Law, (1982 ed.), p. 578. This means that non-Indian uses must defer to Tribal uses, in times of shortage. Nevertheless, as is shown below, the PRDEIS establishes the framework to continue management practices that undermine our rights to the use of water, in favor of non-Indian water uses, allegedly for the benefit of the non-Indian regional and national economies.

4. Pick-Sloan Program Impacts on Indian Tribes

The PRDEIS ignores the widespread destruction caused by the Pick-Sloan project on the Indian Reservations of the Missouri River basin. The scholar and best-selling author, Vine Deloria, Jr., an enrolled member of the Standing Rock Sioux Tribe, has described Pick-Sloan as "the singlemost destructive act ever perpetuated on any tribe by the United States." Pick-Sloan caused more damage to Indian land and resources than any other public works project in American history. Approximately 350,000 acres of Indian land were taken by the Corps of Engineers for this project.

**Indian Lands Taken For
Missouri River Reservoir Construction**

<u>Reservation</u>	<u>Reservoir</u>	<u>Acres Taken</u>
Fort Berthold	Garrison	154,912
Standing Rock	Oahe	55,994
Cheyenne River	Oahe	99,548
Lower Brule	Big Bend	14,958
Lower Brule	Fort Randall	7,997
Crow Creek	Big Bend	6,416
Crow Creek	Fort Randall	9,149
Santee	Gavins Point	593
Total Acreage Taken		349,566

The 349,566 acres of Indian land taken for Pick-Sloan represents 23 percent of the 1,499,759 acres impacted by the main stem dams, reservoirs and transmission lines. In addition, miles of artificial navigation channels were constructed across the Omaha and Winnebago Indian Reservations. Although the impact due to the construction of the main stem dams cannot be reversed, the continuing effects these projects have had on the Tribes can and should be addressed.

The Pick-Sloan project severely and disproportionately impacted the Indian tribes of the Missouri River basin. As is shown above, approximately 25 percent of the land acquired by the Corps of Engineers for the main stem dams

was Indian land. Proportionately, much more Indian land was utilized for the project than non-Indian-owned land.

The locations of the dams appears to have been planned so as to maximize the impact on Indian land and minimize the impact on non-Indian communities. The Gavins Point Dam is located directly upstream from Sioux City, Iowa, and below the Santee and Yankton Indian Reservations, which were substantially flooded by Lewis and Clark Lake, behind the Gavins Point Dam. The Yankton Indian was also inundated by Fort Randall dam, constructed right on the Reservation at Lake Andes, South Dakota. The tailwaters behind Fort Randall subside near the non-Indian community of Chamberlain, which suffered no loss of land or community.

Just north of Chamberlain, though, Big Bend Dam was developed right on the Crow Creek and Lower Brule Reservations, inundating tens of thousands of acres of Indian land and destroying the communities of Fort Thompson and Lower Brule. The tailwaters behind Big Bend Dam subside just below the non-Indian community of Pierre, South Dakota. Immediately above Pierre, the Corps of Engineers built Oahe Dam, flooding over 150,000 acres of Indian land on the Standing Rock and Cheyenne River Sioux Indian Reservations. This resulted in the forced displacement of numerous Tribal communities. Yet the tailwaters of Lake Oahe subside at Bismarck, North Dakota, saving Bismarck from any adverse impacts. Similarly, just upstream from Bismarck, the Corps built Garrison Dam, which destroyed numerous communities on the Fort Berthold Indian Reservation, but whose tailwaters remained below Williston, N.D., which suffered no impact.

The development of the Missouri River main stem dams remains a classic case study of environmentally destructive development which disproportionately impacts indigenous people. In the great plains region, the Tribal communities arose in the wooded bottomlands of the Missouri and its primary tributaries. The riparian environment provided the resources upon which the Tribal communities became economically self sufficient, well into the twentieth century. Author Michael Lawson has described Pick-Sloan's impacts as follows:

The shaded bottom lands provided a pleasant living environment with plenty of wood, game, water and natural food resources. The trees along the Missouri and its tributaries were a primary source of fuel and lumber for the tribes and (provided protection)... from the ravages of winter and the scorching summer heat. The gathering and preserving of wild fruits and vegetables was traditional facet of Plains Indian culture. The numerous types of herbs, roots, berries and beans that grew in the bottom lands added bulk and variety to the diet, and were used for medicinal and ceremonial purposes.

The wooded bottom lands also served as shelter and feeding grounds for many species of wildlife, and hunting and trapping were important sources of food, income, and recreation for the tribes. The loss of bottom land grazing areas crippled tribal livestock operations, once the primary industry on many reservations. Artificial shelters had to be built to replace the natural resources of the old habitat. Stock raising thus became far more difficult, expensive, and risky.

The Pick-Sloan projects damaged every aspect of reservation life. Abruptly the tribes lost the basis for their subsistence and had to develop new ways of making a living in a cash economy. The relocation of the agency headquarters and largest communities on Fort Berthold, Cheyenne River, Crow Creek and Lower Brule disrupted federal and tribal services, and tipped the social, economic, and religious fabric of the well-integrated tribal life. It was especially onerous for the Indians to excavate their cemeteries and private burial grounds and to relocate their ancestors' remains.

Psychological and aesthetic damages are impossible to measure, but the Indians' lifestyle made the effects of Pick-Sloan especially difficult. Unlike most non-Indians affected by public works projects, these tribal members could not duplicate their old ways of life by moving to a similar environment. Their old ways of life were shaped by a land which no longer existed. after the bottom lands were flooded....

The marginal lands which remained after inundation could not replace the natural advantages of the Indians' former homes. The barren uplands regions where the Indians were forced to move, were less hospitable and more difficult to survive.

Michael M. Lawson, Dammed Indians - Pick-Sloan Plan and the Missouri River Sioux, University of Oklahoma Press (1982).

Ultimately, Pick-Sloan constitutes the destruction of Indian Reservation economies for the benefit of the larger societal economy. Obviously, no economy may develop when the resources of the economy are destroyed and utilized for the economic benefit of others. This is what has happened to the Indian Nations of the Missouri River basin. The construction of the dams, and the manner in which they are operated, results in the taking of resources from poor indigenous communities for the benefit of the wealthier society at large.

The Tribes disproportionately contributed our economic resources for Pick-Sloan, but that we are receiving none of the benefits. The Environmental Impact Statement must tell this story. Indian land was used for the sites of the projects; Indian water is used to produce hydropower, support navigation, and for the other uses of the system.

The PRDEIS estimates that the Pick-Sloan program contributes nearly \$1.8 billion to the national economy each year. It ignores the proprietary rights of the Tribes to the resources utilized to produce this benefit. This is wrong.

Ironically, though, the current debate about the distribution of Pick-Sloan's benefits is dominated among those who already benefit, but want more. The states of South Dakota and Missouri continue to bicker about water flows, with South Dakota wanting higher reservoir levels for recreation development upstream, while Missouri seeks continued releases of water to support its navigation industry. The Missouri River Basin Association is playing referee between these states, and working toward a "consensus" whereby the status quo may continue into the next century. The Corps stands poised to accept MRBA's position, although, like the Corps' own analysis, it completely ignores the concerns of the Tribes.

5. Lack of NEPA Compliance

The Corps of Engineers is relying upon the Missouri River Basin Association (MRBA) to identify consensus-based principles for the development of a preferred alternative. The MRBA represents eight Missouri River basin states, that claim to be affected by the Master Water Control Manual.

Unlike the Indian Nations, None of these states possess water rights to the Missouri River main stem. They have no propriety claims to the bed of the Missouri.

The collaborative process by MRBA is a sham. It is a political exercise designed to develop a compromise between the diverging economic interests of the lower basin - navigation and agriculture, the upper basin - recreation, and endangered species protection. For example, South Dakota states in the *Draft South Dakota Alternative, (May 24, 1999)* that "Most of the conflict between the upper and lower basin states can be traced to competing interests of navigation and recreation."

That is the non-Indian end-game. Tribal concerns remain outside of this conundrum.

Mni Sose is very concerned with the drought management principles espoused by MRBA. The adaptive management principles whereby water remains stored during the first year of droughts for full navigation service in subsequent years is unworkable. There is an assumption that water must be stored in one year in anticipation of future drought years. The water would be stored in places like Lake Oahe on the Cheyenne River and Standing Rock Reservations and Lake Sakakwea on the Fort Berthold Reservations, and have impacts on the Reservation environment that require compliance with Executive Order 12898.

Mni Sose is likewise concerned with MRBA's recommendations. The spring rise at Fort Peck for the protection of fish and wildlife in the river stretch to Lake Sakakwea's tailwaters directly and disproportionately impacts the Fort Peck Indian Nation, and consequently requires compliance with Executive Order 12898.

MRBA's 44-28 plan would reduce navigation service with declining amounts of water stored in the reservoir system's permanent pool. There would be full navigation service with 56 million acre-feet of permanent pool storage, with minimum service at 52 MAF. South Dakota proposes to end navigation support if storage levels drop to 41 MAF. Missouri proposes to split water shortages, and agrees to a spring rise in above-average years.

These proposals fail to account for flaws in the Corps of Engineers modeling. There is no consideration in the model of the value of the proprietary rights of the Tribes, or of the impacts on the Indian Reservations on the main stem. Hydropower values are understated. The value of Indian land on the

Yankton Sioux Reservation that are lost to erosion, and similar liabilities, are not considered. The values do not take into account lost economic opportunities on the Reservations, from the destruction of land and the suppression of Indian water development through the Pick-Sloan program. The costs incurred on the Reservation are generally ignored.

There must be more comprehensive measurement of the impacts of the consumptive use by the Tribes of our reserved water rights. The Corps of Engineers has estimated that under the Current Water Control Plan the depletion of 7.1 MAF cuts off project functions under the current model. This necessitates far greater depletion analysis. Significantly, it illustrates that the Indian Tribes possess propriety rights to the water resources arrogantly negotiated by MRBA and the Corps.

Mni Sose opposes the states' proposals. NEPA does not provide for environmental bargaining among states and the private special interest groups which drive the states and MRBA.

NEPA requires consideration of direct and indirect impacts of the proposed action and the alternatives. 40 CFR §1502.. There must be a "scientific and analytic basis" for the comparison of the effects of different alternatives. 40 CFR §1502.16. There shall be a discussion of "The environmental affects of alternatives, including the proposed action. *Id.* Where "there is incomplete or unavailable information, the agency shall always make clear that such information is lacking." 40 CFR §1502.22.

The Corps proposes to finalize a preferred alternative on the DEIS based upon private negotiations of states and their special interests. These negotiations may or may not be based on Corps of Engineers assumptions that are questionable. Information on impacts to Indian water rights, treaty rights, riparian resources, groundwater, economic opportunities, plantlife used for ceremonial purposes and cultural resources is completely lacking.

"If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives, and the overall cost of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement." 40 CFR §1502.22(a).

The Corps of Engineers cannot make environmental decisions under NEPA based upon pre-existing agreements, notions or biases. Kastev v. Coleman, 530 F.2d 176 (8th Cir. 1976). NEPA requires environmental

decisionmaking based upon consideration of all relevant factors. The Corps "may not define the objectives of its action so unreasonably narrow that... (the result of an EIS is a foreordained conclusion." Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991).

NEPA is a *federal* statute. It cannot be delegated to the states.

Nor can the annual operations. South Dakota's proposal for a state-controlled agency to oversee annual operations and the allocation of water during periods of shortage is unacceptable. The Tribes have priority in times of shortage, period.

The Corps of Engineers should broaden the scope of analysis to include impacts of depletions for Indian water rights, and other impacts on the Tribes and cultural resources. No preferred alternative should be considered until this takes place.

6. Indian Water Rights Considerations in the PRDEIS

The Corps[s must revise its description of Indian water rights for the Draft EIS.

The PRDEIS states-

Certain Missouri River basin Indian Tribes are entitled to water rights in streams running through and along their reservations under the Winters Doctrine.... The basin Indian Tribes are in various stages of quantifying their rights. Currently, tribal reservation reserved water rights have not been quantified in an appropriate legal forum or compact except in four instances...

The Study considered only existing consumptive uses and depletions.

COE, PRDEIS, 3-74.

This seriously misstates the nature of Indian water rights, and the responsibility of the Corps of Engineers to act in accordance with our rights. The water rights of the Tribes under the Winters Doctrine are vested, perfected rights. Arizona v. California, 373 U.S. 546 (1963). Water rights under the

Winters Doctrine are reserved rights, not appropriative rights. Winters v. United States, 207 U.S. 564 (1908). Accordingly, the water is owned by the Tribes regardless of whether there has been a quantification. It is ludicrous to suggest that the Mni Sose Tribes "may be entitled" to reserved water rights to the Missouri's main stem. This blatantly contradicts the status of the law.

Indian reserved water rights are vested, regardless of whether they have been quantified. Moreover, they are of a very substantial magnitude. The United Sioux Tribes Inc. of South Dakota has estimated the consumptive water needs of eight Sioux Tribes in South Dakota to total 15 million acre-feet annually. (United Sioux Tribes, 1978). This far exceeds the 7.3 MAF depletion runs calculated by the Corps to disrupt computer modeling for non-Indian project purposes.

Yet the Corps of Engineers mis-states the existence of the right, and ignores their potential affects. It suggests that there is some vagueness underlying Indian reserved water rights, and that the Corps hopes they will go away, so the Corps can avoid dealing with them.

Indian water rights in the Missouri River are extensive and will dramatically impact water resource allocation in the Missouri in the 21st century. This must be clearly acknowledged in the EIS.

7. Cultural Resources

In the PRDEIS, the Corps recognized the existence of "historic properties" along the reservoirs. The Corps identifies 158 sites at Fort Peck, 676 at Lake Sakakawea and 945 at Lake Oahe. Data for the sites at Lake Sharpe, Lake Frances Case, and Lewis and Clarke Lake has not been provided. In the assessment of alternatives for system operations, the Corps identifies the impacts on those sites that are impacted by fluctuating lake levels.

Nevertheless, the entire framework for these analyses is flawed, for several reasons. First, there is a substantial amount of information in this area which the COE does not possess. This results from the inadequate consultation between Corps archaeologists and the basin's Indians, for over 30 years. In addition, for those sites which have been identified, there is a concern that the COE does not properly identify the significance of the sites.

For example, several years ago was recently discovered on a Reservation along the Missouri River. The site included a ring of objects, which

the Corps identified as a tipi ring, with no cultural significance. The Indian representatives properly identified the site's historic use and significance. It was a sacred area, utilized for fasting and visions. The Corps of Engineers had failed to properly identify a site which holds substantial religious and cultural significance to the people on whose Reservation the site is located. In the Corps' scheme of reservoir regulations, it would have entirely overlooked this area, and managed the water resource and COE project lands without conferring any consideration on the need to protect it.

Second, there has been inadequate generally consideration on the impact of the system operations on those sites in the fluctuation zone. The surveys are too narrow, and we are concerned that many sites are not accounted for. These sites are very, very important to our people. Yet, they are treated no differently than, say, a marina, in the regulation of the reservoirs.

Third, there is no assessment in the PRDEIS of the need to manage COE project land in a manner beneficial to our cultural sites and graves. The management of the project lands should be integrated with the management of the water resource, for the protection of these sites. The current management scheme fails to do so.

For example, at the confluence of the Missouri and Grand Rivers on the Standing Rock Indian Reservation, the Oahe project resulted in the formation of an island. There is an important cultural site on this island. Directly adjacent to this site, the Corps has leased a tract of land to a private, non-Indian developer. In addition, the Corps has developed the ironically-named Indian Memorial Recreation Area, directly adjacent to the culturally significant area.

Ultimately, the water and land management schemes must be integrated for the protection of Indian remains and cultural resources. The protection of these sites must be a priority of an integrated management scheme. Numerous treaties, NAGPRA and the Archaeological Resources Protection Act of 1979 (16 USC 470aa-470ll) require such protection. The alternatives outlined in the PRDEIS fail to elevate this issue as a priority, thereby violating treaties and federal law.

Finally, the COE's long term model for operation of the system purports to incorporate the "value" of our ancestors remains and cultural objects into a computer model for alternatives for system operations. This preposterous notion must be rejected. Instead, the COE must work in close coordination with

the Tribes to identify the culturally significant areas, and establish models for reservoir regulations that will protect them.

Damage to cottonwood and cedar trees must be evaluated. The riparian habitat for cottonwoods on many Reservations has been inundated. Cottonwoods are used to construct the sweat lodge for one of the most important of native ceremonies. The cottonwood is used as an integral part of the alter for the Sun Dance, perhaps the most sacred of Native American religious ceremonies. Cedar is also used in the Sweat Lodge ceremony. Yet the impacts on these resources by the Corps' Missouri River operations, again, is ignored.

8. Lack of Compliance with Environmental Justice

The Corps of Engineers has acknowledged that its Missouri River Basin Pick-Sloan program operations impacts trust assets of the Indian Nations of the Mni Sose Coalition. As is discussed herein, the precise impacts on Indian land, water, riparian and cultural resources has not been determined.

Executive Order 12898 requires federal agencies to address environmental justice concerns. It requires "each federal agency... (to) make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health effects of its... activities on minority populations."

The EPA defines "Environmental Justice" as involving "fair treatment." U.S. Environmental Protection Agency, Review Draft Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses (July 12, 1996), 2. The EPA states that "'Fair treatment means that no group of people, including racial, ethnic or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from...(federal activities)." Id.

Clearly, this is the case with Missouri River Master Manual PRDEIS.. There are adverse environmental and biological developments on the Indian Reservations, and destruction of native cultural resources, caused by Pick-Sloan. In this instance, "Each federal agency must... identify(ing) potential effects and mitigation measures in consultation with affected communities..." Id. at 3.

Yet the Corps of Engineers ignores the Tribes. Instead, the Corps impermissibly defers to the states.

PROPOSAL

MNI SOSE INTERTRIBAL WATER RIGHTS COALITION IMPACT OF MISSOURI RIVER OPERATIONS ON THE INDIAN TRIBES OF THE MISSOURI RIVER BASIN

1. Background

The Corps of Engineers is currently revising a preliminary draft environmental impact Statement for the operation of the Missouri River system of dams and reservoirs, commonly known as the Pick-Sloan Project. Dams in the system include Fort Peck, Garrison, Oahe, Big Bend, Fort Randall and Gavins Point.

The revised preliminary draft environmental impact Statement (RPDEIS) addresses storage allocations for flood control, multiple use, carryover multiple use and permanent pools. Options have been developed for the maintenance of permanent pools, navigation service levels, intra-system regulation for fishery production and Mississippi River target levels. Given the hydrology of the Missouri River from 1898 to present in combination with the various options, the Corps of Engineers has developed economic, environmental and historic properties models to predict impacts of as many as 64 alternatives on the eight States in the Missouri River Basin and on the region as a whole.

The economic models of the Corps of Engineers address flood control, navigation, hydropower production, recreation and water supply. The environmental models address wetland habitat, riparian habitat, tern and plover habitat, reservoir young fish production, cold reservoir and river fish habitat, warm river fish habitat, native river fish habitat and other variables. Historic properties models address impact to sites that are dependent on lake level.

The Corps of Engineers is on an accelerated schedule to conclude its analysis of alternatives for the future operation of the Missouri River system in fall 1999. The Coalition has been asked to provide a preferred alternative to the Corps of Engineers in summer 1999.

The Coalition has commented previously with regard to the inadequacy of the PDEIS relating to the Indian Tribes. Comments were submitted in September 1993 and September 1994. More recent comments were submitted in March 1995. The comments have focused on the inadequacy of the PDEIS in its treatment of the economic, environmental and historic resource impacts of operational alternatives on the Tribes of the Missouri River Basin. The proposal presented here is intended to correct the inadequacies of the PDEIS to address Tribal impacts. Absent the analyses proposed here, the Tribes of the Missouri River Basin are requested to provide decision-making on a preferred alternative without sufficient background for an informed decision.

While the State of South Dakota, for example, proposes a Missouri River Review Committee consisting of (1) Missouri River Basin Association (MRBA) delegates: eight delegates from the States and one delegate from the Tribes and (2) delegates from appropriate federal agencies, the diminished level of Tribal participation is wholly inadequate and unacceptable to the Tribes. In much the same way, the PDEIS attempts to meld impacts on the Indian Tribes with the broader population and environmental base without the ability to recognize or distinguish the marked social-economic, environmental and historic and cultural resource differences. An example of the inadequacy of MRBA to represent the Tribes is the current plan to substitute a spring rise below Fort Peck Dam for a spring rise below Gavins Point Dam. In the case of a spring rise below Fort Peck Dam, there has been no consultation with the Fort Peck Assiniboine and Sioux Tribes and no decisions from them despite the fact that the north bank of the Missouri River between Fort Peck Dam and the upper end of Lake Sakakawea is owned by the Tribes over the larger share of the distance.

The proposal submitted here will provide for the accumulation of data and analyses of impacts by the Coalition to be guided by, developed, reviewed and concurred in by the member Tribes of the Coalition. The impacts on the Tribes will be summarized by three geographical areas: the Missouri River, Yellowstone River and tributaries above Fort Peck Dam; the Missouri River mainstem and tributaries from Fort Peck Dam to Gavins Point Dam; and the Missouri River mainstem and tributaries from Gavins Point Dam to the confluence with the Mississippi River.

2. Collection of Social Economic Data

For each reservation in the Missouri River Basin, the partnership of the Coalition and the respective Tribes will compile relevant social and economic information from the 1990 Census and other information available from the Tribes. Statistics will be compiled for the following parameters:

- existing population by block group, growth rate and population projections;
- age, sex and fertility;
- housing by block group, deficiencies and future housing needs, including projections of number of persons per household;
- housing units by source of water (public system, well, other);
- housing units by source of sewer (public, septic tank, other);
- housing units by status of plumbing (complete or lacking);
- household, family and per capita income;
- number of persons in poverty status;
- persons in the labor force (employed and unemployed; and persons not in labor force);
- occupation and industry of employed persons;
- residual income analysis considering annual cost of electricity and other fuels; annual costs of water, sewer and waste disposal; and annual cost of housing;
- morbidity and mortality by all causes and extra health-care costs due to morbidity and mortality above regional levels.

The foregoing data will be compiled in tabular form with a narrative explanation. The narrative will fully describe the social and economic conditions within each reservation. Maps will be prepared

showing the location of reservations within the Missouri River Basin and the location of block groups within each reservation.

3. Collection of Environmental Data

The Pick-Sloan program has had impact on each reservation in the Missouri River Basin, whether the reservation is bounded or traversed by the mainstem Missouri River or whether tributaries of the Missouri River rise upon, border or traverse the Indian reservation. The Corps of Engineers is seeking to limit the environmental impact analysis of a change in operation of the Missouri River mainstem dams to incremental impacts as distinguished from cumulative impacts. The analysis proposed here will address cumulative impacts and will, therefore, involve each of the Indian reservations in the Missouri River Basin that is affected by a Pick-Sloan component.

Environmental resource information for each reservation will be collected and displayed on geographic information system (GIS) layers. The following resource information will be collected, mapped and compiled:

- wetland habitat (location and acreage);
- riparian habitat (location and acreage);
- threatened and endangered species terrestrial habitat (location and acreage by species);
- threatened and endangered species aquatic habitat (location, acreage and/or stream length by species);
- cold and warm river fish habitat (location, acreage and/or stream length by species);
- nature and extent of stream/reservoir erosion/degradation downstream from Pick-Sloan components (location, length, depth, value);
- nature and extent of stream/reservoir sedimentation/aggradation downstream from Pick-Sloan components (location, length, depth, value);
- nature and extent of artificial navigation channel (location, length, depth).

A narrative of each resource will be prepared. The narrative will describe the environmental resource and discuss its distribution and importance to the reservation and Tribe. Changes in each resource from the date of implementation of the Pick-Sloan feature impacting the resource will be documented to the extent information is available. Aerial photographs and other historic information will be utilized in this effort.

Recommendations for mitigation and enhancement of historic and projected impacts will be provided.

4. Collection of Historic Resource Information

The Coalition will work with the collective Tribes to establish a confidential process for the inventory of cultural and historic resources on each of the Indian reservations within the Missouri River Basin. In some cases it is anticipated that individual Tribes will have objection to disclosure

of known cultural and historic sites. In those cases, a process for determining the impact of past Pick-Sloan construction and operation features and future operations of the Missouri River mainstem reservoirs will be developed with the affected Tribes. In other cases it is anticipated that Tribes will provide information on the location, nature and extent of cultural and historic resources to assess the past impacts and projected future impacts of Pick-Sloan components, including the future operation of the Missouri River mainstem reservoirs.

A special task force will be developed from the Tribes to deal effectively with the sensitive issues surrounding the cultural and historic resources and the protection of human remains. The purpose of data collection on this subject area will be to provide recommendations for preservation of cultural and historic resources. A document describing the historic context of cultural resources will be prepared for each reservation. The document will cite previous investigations.

5. Collection of the Facility Information

On each of the Indian reservations, the location, nature and description of existing and proposed facilities will be compiled and mapped on a GIS layer. These facilities will include diversion points from the Missouri River and its tributaries for drinking, irrigation and other purposes; recreation facilities, including marinas, casinos, boat docks, picnic and camping areas, among others; and hydropower generation equipment.

6. Economic Impact Analysis

An economic impact analysis for the Tribes, individually and collectively, will be conducted. The analysis will take the form of a regional economic analysis based on federal principles and standards applicable to water resources projects. The various alternatives for future operation of the Missouri River, including the preferred alternative, will serve as a base for this analysis. While only some Tribes will be affected directly by reservoir levels, releases for navigation and other operational options, all Tribes will be affected by the impact of future operations on electrical power since each Tribe in the Missouri River Basin will receive a direct allocation of federal power generated at the mainstem dams. The allocation will begin in 2001 for some tribes and later for others.

A conventional economic analysis involving only those Tribes on the Missouri River mainstem will be conducted. The Corps of Engineers models will be accessed and utilized for determining the impact of alternative operations on reservoir levels and the corresponding impact on recreation potential, costs of diversion, erosion, sedimentation and related economic impacts.

A more creative economic analysis involving all Tribes will also be conducted. The impact on changes in hydropower production, for example, will be assessed to determine increases in power costs and decreases in Indian household residual income. Residual income will be correlated with mortality and morbidity of major diseases for both Indian and non-Indian populations of the basin.

From this correlation, an assessment of rising or declining hydropower allocation, corresponding to change in reservoir operations, on health-care cost will be made. It is believed that part of the Indian population of the Missouri River Basin experiences a higher incidence of heart disease, cancer and diabetes than the non-Indian population. The present value of extra or added health-care costs will total \$400 million over the next fifty years for each 5,000 members of the Indian population as contrasted with each 5,000 members of the white population. Because mortality associated with these diseases may be correlated, at least partially, with income or residual income, the economic impact of change in hydropower operations, for example, may be assessed quantitatively. Changes in the cost of drinking water, for example, may also be assessed by computing the change in residual income associated with modified reservoir levels that will affect pumping costs. A small change in costs of water per household may be converted to changes in health-care costs or savings.

7. Environmental Resource Analysis

Corps of Engineers models for the mainstem will be used to evaluate the direct impact of changing operations on the mainstem reservoirs on the environmental resources of reservations bordering the reservoirs. These models will also be evaluated and modified appropriately to analyze the historic impact of Pick-Sloan components on Missouri River Basin tributaries that have impacted Indian Reservations away from the mainstem Missouri River. In some cases other agencies have developed similar models that more appropriately address a specific reservoir, such as Angostura, Shadehill or Yellowtail.

Appropriate models will be used to assess the historic and future impact on riparian and aquatic habitats of all Pick-Sloan components, whether part of the mainstem operation or the tributaries. Both incremental and cumulative impacts will be assessed. Recommendations will be made for the mitigation and enhancement of environmental resource impacts.

8. Cultural and Historic Resource Analysis

Corps of Engineers models for the mainstem will be used to evaluate the direct impact of changing operations of the mainstem reservoirs on the historic and cultural resources of reservations bordering the reservoirs. These models will also be evaluated and modified appropriately to analyze the historic impact of Pick-Sloan components on the tributary streams. Both incremental and cumulative impacts will be assessed. Recommendations will be made for the preservation and protection of cultural and historic resources.

9. Impact of Alternatives on Future Water Availability

The Corps of Engineers has predicted the level of future depletions that can be accommodated within the Missouri River Basin without impacting proposed alternatives for maintaining minimum

reservoir operating pools and downstream navigation releases. For higher minimum reservoir operating pools, the Corps of Engineers' models predict that sufficient water is available in the Missouri River Basin to accommodate as much as 2.5 million acre feet annually of future depletion. For lower minimum reservoir operating pools, the Corps of Engineers' models project the ability to deplete as much as 7.5 million acre feet annually.

The range of surplus water in the Missouri River Basin as set forth above underscores the ability of the United States to reserve sufficient water from future appropriation to accommodate part of the water rights of the Indian Tribes of the Missouri River Basin without impacting existing non-Indian water development. Recommendations will be developed for the Secretary of Interior for alternatives under consideration by the Corps of Engineers for the preservation, protection and reservation of water supplies to partially fulfill the reserved water right claims of the respective Tribes.

Existing compacts and decrees acknowledge over 1.0 million acre feet of diversion rights for the Fort Peck Indian Reservation, approximately 200,000 acre feet in future diversion rights on the Wind River Indian Reservation, among other arrangements. The implementation of these compacts, decrees and settlements will require more depletion allowance than is currently contemplated by the Corps of Engineers in its depletion estimates associated with the range of future operating alternatives.

All Tribes in the Missouri River Basin are affected by the future depletion analysis. Each is impacted by the reliance that Upper and Lower Basin states will place on the minimum pool levels, navigation releases and other implication of the range of alternatives currently under consideration and the selection of a preferred alternative. A sound analysis is needed by the Tribes in order to present policy statements that fully advise the United States and States that the Tribes have compacts, decrees and claims that will significantly impact the availability of future water use by others.

10. Roles of the Parties

The Tribes of the Missouri basin will govern the collection of data, its analysis and the production of documents. This will be accomplished by decision making of Tribal delegates assigned to the Coalition, a structure currently in place. Delegates will attend monthly meetings in Rapid City, South Dakota, or other central locations throughout the 18 months of performance. Delegates will attend the monthly meetings with authority to act on behalf of the Tribes they represent if such authority has been provided. Historically, a majority, but not all, of the delegates have been authorized to represent their Tribes.

Each Tribe will also designate a member(s) of its staff in its water resources department (or more appropriate division of Tribal government) to provide up to a halftime equivalent through the period of study to provide data and participate in the analysis.

The Coalition will provide staff and/or contracted expertise to compile data, conduct necessary analyses and produce documents for review by the Tribal delegates. Federal agencies may be called upon to provide expertise. The Coalition will provide project and financial management and will be responsible for deliverables.

11. Schedule and Deliverables

The proposed work will be conducted over an 18-month period. An interim draft document, supported by GIS mapping layers as identified above, will be provided 10 months into the study. A final draft document will be provided 16 months into the study, and a final document will be provided at the end of the 18 months. While the Corps of Engineers may have concluded its draft and final EIS before completion of the Tribal analysis, the Tribal product will assist in final decision making respecting the future operation of the mainstem dams and reservoirs. The product will be essential to the Tribes in congressional hearings. The product will also assist the Secretary of Interior and other agencies and to provide proper representation of the Tribes as their trustee.

The document will describe the incremental and cumulative impacts the Corps of Engineers principal alternatives for operating the mainstem Missouri River dams on the Tribes on the Missouri River Basin, individually and collectively. The document will address separately those Tribes on the Yellowstone River and the Missouri River upstream from Fort Peck Dam; those Tribes in the Missouri River Basin between Fort Peck Dam and Gavins Point Dam; and those Tribes in the Missouri River Basin between Gavins Point Dam and the Mississippi River. The document will provide recommendations of the Tribes for the operation of the Missouri River dams and reservoirs representing a Tribal preferred alternative for each of the regions set forth above.

BUDGET

MNI SOSE COALITION
MISSOURI RIVER OPERATION ENVIRONMENTAL ANALYSIS

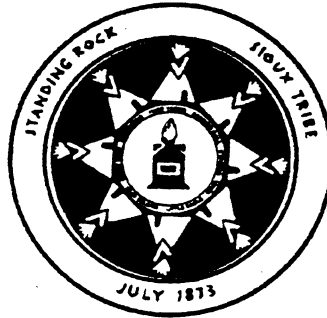
Item	Number of Reservations	Per Reservation		Unit Rate	Total Cost
		Units	Number		
Tribal Effort					
Labor	20	Man Months	9	\$3,120.00	\$561,600
Travel					
Mileage	20	Miles	13,000	.30	108,000
Lodging	20	Days	54	50.00	54,000
Meals	20	Days	54	20.00	21,600
Office					
Phone	20	Minutes	5,850	.75	87,750
Photocopy	20	Pages	7,800	.10	15,600
FAX	20	Pages	3,900	1.50	117,000
Subtotal					965,550
Coalition Effort					
Staff (3)	--	Hours	9,360	30.00	290,800
Travel					
Airfare	--	Each	36	1,000.00	36,000
Auto Rent	--	Days	144	75.00	10,800
Lodging	--	Days	144	50.00	7,200
Meals	--	Days	144	20.00	2,880
Office					
Phone	--	Minutes	46,800	.75	35,100
Photocopy	--	Pages	156,000	.10	15,600
FAX	--	Pages	15,600	1.50	23,400
Computer	--	Hours	3,120	8.00	24,960
Subtotal					436,740
Consultant Effort					
Collection of Social and Economic Data					
Professional	20	Hours	60	50.00	50,000
Computer	20	Hours	30	8.00	4,800
Collection of Environmental Data					
Professional	20	Hours	100	50.00	100,000
Computer	20	Hours	100	8.00	16,000
Collection of Historic Resource Data (Class I)					
Professional	20	Hours	100	50.00	100,000
Computer	20	Hours	50	8.00	9,000
Collection of Facility Information					
Professional	20	Hours	50	50.00	50,000
Computer	20	Hours	25	8.00	4,000
Economic Impact Analysis					
Professional	20	Hours	120	50.00	120,000
Computer	20	Hours	24	8.00	3,840
Environmental Resource Analysis					
Professional	20	Hours	110	50.00	110,000
Computer	20	Hours	22	8.00	3,520
Cultural and Historic Resource Analysis					
Professional	20	Hours	55	50.00	55,000
Computer	20	Hours	10	8.00	1,600
Future Water Availability					
Professional	20	Hours	20	85.00	34,000
Computer	20	Hours	10	8.00	1,600

BUDGET (Cont)

MNI SOSE COALITION
MISSOURI RIVER OPERATION ENVIRONMENTAL ANALYSIS

Item	Number of Reservations	Per Reservation		Unit Rate	Total Cost
		Units	Number		
Reporting					
Professional	20	Hours	50	85.00	85,000
Clerical	20	Hours	20	35.00	14,000
Computer	20	Hours	10	8.00	1,600
Coordination					
Airfare	--	Each	36	1,000.00	36,000
Auto Rent	--	Days	144	75.00	10,800
Lodging	--	Days	144	50.00	7,200
Meals	--	Days	144	20.00	2,880
Phone	--	Minutes	23,400	.75	17,550
Photocopy	--	Pages	31,200	.10	3,120
FAX	--	Pages	15,600	1.50	23,400
Subtotal					873,910
Total					\$2,276,200

Charles W. Murphy
Chairman



Tom Iron
Vice Chairman

Elaine McLaughlin
Secretary

DISTRICTS

Robert Cordova
Cannonball District

Raphael See Walker
Fort Yates District

Joe Strong Heart
Wakpala District

Palmer Defender
Kenel District

Dean Bear Ribs
Bear Soldier District

Milton Brown Otter
Rock Creek District

Farren Long Chase
Little Eagle District

Randal White Sr.
Porcupine District

AT LARGE

Joe Keepseagle

Dave Archambault

Jesse Taken Alive

Reva Gates

sharon Two Bears

Verna Bailey

July 6, 1999

Ms. Peg O'Bryan, Native American Coordinator
Department of the Army
Northwest Division - ACOE
12565 West Center Road
Omaha, Nebraska 68102-4978

Dear Ms. O'Bryan:

Recently we received a letter from Colonel M.S. Meuleners offering the Standing Rock Sioux Tribe a meeting to discuss consultation, for the Missouri River Water Master Control Manual.

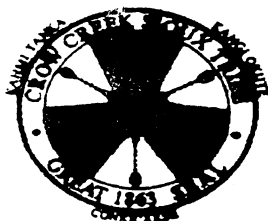
We want to emphasize our sovereign right to a government consultation on the Master Manual.

Standing Rock Sioux Tribe, Department of Water & Natural Resources Administrator, Shirley Marvin, will be in contact with your office to coordinate the date for a meeting. The Standing Rock Sioux Tribe wishes to host the meeting.

Ms. Shirley Marvin can be reached at (701) 854-7214 should you wish to contact her. Thank you.

Sincerely,

Charles W. Murphy
Chairman



CROW CREEK SIOUX TRIBE
FORT THOMPSON, SOUTH DAKOTA 57339

July 21, 1999

TRIBAL COUNCIL

Harold D. Miller Sr.
Chairman
Norman Thompson Sr.
Vice-Chairman
Tina Grey Owl
Secretary
Ronald Kirbie Sr.
Treasurer
Randy Shields Sr.
Councilmember
Donald McGhee
Councilmember
Loren Falls Sr.
Councilmember

Colonel Michael Meuleners
U.S. Department of the Army
Corps of Engineers - Northwestern Division
12565 West Center Road
Omaha, Nebraska 69144-3869

RE: Request for Consultation with Crow Creek Sioux Tribe on
the Master Manual Review and Update & S.D. Mitigation Act.

Dear Colonel Meuleners:

Inclosed you shall find Crow Creek Tribal Council Resolution
no. CC-99-07-14-01 requesting that you visit the Crow Creek Reserva-
tion and consult with the Tribe on the Missouri River Master Water
Control Manual Review and Update.

This is an important issue to our Tribe. The Corps operation have
a substantial impact on the environmental and cultural resources of our
Reservation.

We have been very distressed with the past Corps of Engineers
actions on this issue. The previous Environmental Impact Statements
that have been released under this process mis-state the nature and
extent of our water rights. There has been no discussion of the need
to include Tribes such as Crow Creek in the planning process, although
Big Bend Dam is located on our Reservation.

In addition, we are very concerned with Corps of Engineers' acti-
vities under the South Dakota Terrestrial Wildlife Habitat Mitigation
Act. The Secretary of the Army should not transfer to South Dakota
any land that is within the original Reservation boundaries, de-
lineated in the 1863 Executive Order establishing the Crow Creek Indian
Reservation. There should be no land transfer of COE land along the
Missouri River to South Dakota, until its impacts are evaluated in the
Master Manual DEIS and until a long term plan is developed for protec-
tion of Native American Cultural resources along the Missouri River.

We would appreciate the opportunity to discuss these issues with
you. Please have your staff contact Delores McGhee, Crow Creek
Tribal Unresolved Rights Office, at (605) 245-2425, for the necessary
arrangements. Thank you very much for your consideration.

Sincerely,

Harold Miller
Chairman

Enclosure

P.O. BOX 50 • TELEPHONE: (605) 245-2221 • FAX # 245-2470

A1-447

CCST Tribal Resolution CC-99-07-14-01, dated 13 July. Sent to Col Meuleners

Recommendation: Provide formal response to the CCST resolution, signed by Col Meuleners, after the consultation meeting.

BE IT RESOLVED THAT:

Delay release RDEIS until adequate Consultation w/ CCST & other Tribes

COE RESPONSE

Delayed release by 2 months. COE will release RDEIS in DEC. 1999. We are currently consulting with basin Tribes. We hosted a Consultation Summit and invited all basin Tribes. Summit was attended by Oglala, Lower Brule, Crow Creek, Rosebud, Northern Cheyenne, Standing Rock. COE formally offered to consult with Tribes individually. We have consulted with the SRST, Ft Peck Tribes, CCST, and are coordinating consultation dates with Oglala and LBST. We will continue to consult with the CCST and other basin Tribes on the Master Manual through the ROD (July 2001) and on other issues beyond the ROD.

BE IT RESOLVED THAT:

Delay release of RDEIS until there is a comprehensive analysis of Impacts of operations on the CCST

COE RESPONSE

The RDEIS will include major re-writes, clarifications and additions to include impacts of operations on basin Tribes, federal trust responsibilities, Indian water rights, depletion analysis, recognition of executive memorandum on government to government consultation & a record of consultation, historic properties analysis at Big Bend, Ft Randal and Gavins Point, mitigation measures for incremental impacts. We will also update the Tribal appendix to include Tribal comments on the preliminary RDEIS, including Tribal resolutions. Following release of the RDEIS, there will be time for the CCST and other basin Tribes to review the document and provide formal and informal comments. We will hold workshops and take formal testimony at hearings in compliance with NEPA. We can consult on the RDEIS with Tribes.

BE IT RESOLVED THAT:

Michael Meuleners is represented to visit CCST and Consult with the CCST council

COE RESPONSE

Unfortunately, Col Meuleners, was required to be at another meeting this week, but has authorized his technical staff to consult on his behalf. He sends his regrets for not being here, but his offer to visit the CCST reservation and personally consult with the Tribal Counsel stands. The NAC, Peg O'Bryan will continue to coordinate with Ms. Delores McGhee, for any future consultation meetings the Tribe requests.

.....
Transmittal Letter of resolution dated 21 July

ISSUE: Regarding Title VI, Sec Army should not transfer to SD any land within the original reservation boundaries in 1863 Executive Order establishing the Crow Creek Indian reservation. Also, there should be no land transfer of COE land along MR to SD **until impacts are evaluated in the RDEIS & until a long term plan is developed for protection of Native American cultural resources.**

COE RESPONSE: The COE recognizes the concerns of the CCST regarding Title VI. The Omaha District has the responsibility for implementing Title VI. There is a separate NEPA process specific to Title VI. NEPA requires the COE to evaluate all impacts associated with implementation of Title VI, including identifying and addressing the concerns of the CCST. Therefore, Title VI will not be addressed in the Master Manual RDEIS. The Omaha District will consult with the CCST and other basin Tribes on Title VI implementation activities including protection of Native culture resources. Ms. Candy Gorton (Thomas) will contact Ms. Delores McGhee to make any necessary arrangements.



NUMBER CC-99-07-14-01

SUBJECT AUTHORIZATION TO THE CORP OF ENGINEERS TO DELAY THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

- WHEREAS: The Crow Creek Sioux Tribal Council is the official governing body of and for the Crow Creek Sioux Reservation; and
- WHEREAS: Under the Constitution and By Laws of the Crow Creek Sioux Tribe, the Tribal Council is empowered and authorized to enact resolutions and ordinances governing the management of all economic and educational affairs and enterprises of the Tribe;
- WHEREAS: The Missouri River overlays the Crow Creek Indian Reservation and is an important resource of our Tribe, providing water, fertile soils, and fish and wildlife for our Tribal membership since our Reservation was established in 1863; and,
- WHEREAS: The Crow Creek Sioux Tribe possesses extensive water rights to the Missouri under the principal established by the United States Supreme Court in *Winters vs. United States*; and,
- WHEREAS: The Congress enacted the Flood Control Act of December 22, 1944, authorizing the construction of numerous massive dam and reservoir projects on the Missouri River, and two such projects, Fort Randall and Big Bend, were developed on the Crow Creek Indian Reservation; and,
- WHEREAS: The Crow Creek Sioux Tribe lost over 15,000 acres of our best lands, the Missouri River Bottomlands, for the Fort Randall and Big Bend projects, which caused the destruction on 99 percent of our timber lands, our best grazing and agricultural lands, and forced the relocation of nearly 67 percent of our families from their traditional homeland along the river; and,
- WHEREAS: The Army of Corps of Engineers released a *Preliminary Revised Draft Environmental Impact Statement for the Missouri River Master Water Control Manual*, in July, 1998, and this document mis-states the existence of the water rights off the Crow Creek Sioux Tribe, and shall have a detrimental Impact on cultural resources on our Reservation. And our future economic development; and,
- WHEREAS: The Corps of Engineers has failed to consult with the Crow Creek Sioux Tribe in developing the PRDEIS, although there has been extensive consultation with this states; and,
- WHEREAS: The Corps of Engineers has announced its intention to release a final Draft EIS in October, 1999; and,
- WHEREAS: The COE final EIS on Missouri River operations shall have a substantial impact on the environment on the Crow Creek Indian Reservation and the reserved water rights of the Crow Creek Sioux Tribe; and,

NOW THEREFORE BE IT RESOLVED; THAT, THAT THE CROW CREEK SIOUX TRIBAL COUNCIL CALLS UPON THE CORPS OF ENGINEERS TO DELAY RELEASING THE DRAFT ENVIRONMENTAL IMPACT STATEMENT ON THE MISSOURI RIVER MASTER WATER CONTROL MANUAL, UNTIL THERE IS ADEQUATE CONSULTATION WITH THE CROW CREEK SIOUX TRIBE AND THE OTHER INDIAN TRIBES OF THE MISSOURI RIVER BASIN, AND UNTIL THERE IS COMPREHENSIVE ANALYSIS OF THE IMPACTS OF THE CORPS OF ENGINEERS OPERATIONS ON THE CROW CREEK INDIAN RESERVATION, AS REQUIRED BY THE NATIONAL ENVIRONMENTAL POLICY ACT AND THE EXECUTIVE ORDER ON CONSULTATION WITH INDIAN TRIBAL GOVERNMENTS.

BE IT FURTHER RESOLVED; THAT, THE ARMY CORPS OF ENGINEERS NORTHWESTERN DIVISION DEPUTY COMMANDER MICHAEL MEULENERS IS REPRESENTED TO VISIT THE CROW CREEK INDIAN RESERVATION AND CONSULT WITH THE CROW CREEK TRIBAL COUNCIL ON THE IMPACTS OF CORPS OF ENGINEERS' MISSOURI RIVER OPERATIONS ON THE CROW CREEK INDIAN RESERVATION.

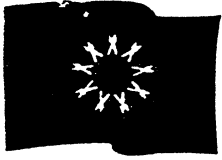
MOTION: KIRKIE
 SECOND: FALLIS
 PRESENT: KIRKIE, FALLIS, GREY OWL, THOMPSON, SR, SHIELDS, MC GHEE
 ALSO PRESENT: CHAIRMAN MILLER CERTIFICATION

THE FOREGOING RESOLUTION was duly adopted by the Crow Creek Sioux Tribal Council on the 14TH day, of JULY, 1999 in a SPECIAL Session by a vote of -11- for -0- against, -0- absent, -0- not voting for The Crow Creek Sioux Tribe, pursuant to authority vested in it by Article VI, Section 1 of the Constitution of the Tribe, ratified by the Tribe on 1, 1949 and approved by the Secretary of the Interior on April 26, 1949 and with amendments approved by the Commissioner of Indian Affairs on June 22, 1961, February 25, 1963 and by the Area Director on June 23, 1980.

ATTEST:

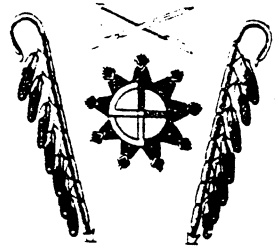
Harold D. Miller
Chairman

Olma Greyell
Secretary



Oglala Sioux Tribe

Box H
Pine Ridge, South Dakota 57770
Phone: (605) 867-5821
Fax: (605) 867-1373



July 21, 1999

Colonel Michael Meuleners
U.S. Department of Army
Corp of Engineers-Northwest Division
12565 West Center Road
Omaha, Nebraska 68144-3869

RE: Request for Consultation with Oglala Sioux Tribe on the Master
Manual Review and Update & South Dakota Mitigation Act

Dear Colonel Meuleners:

I am writing that you visit the Pine Ridge Indian Reservation and consult with the Oglala Sioux Tribal Council on the Missouri River Master Water Control Manual Review and Update, and the South Dakota Terrestrial Wildlife Habitat Restoration Act.

These are very important issues for our Tribe. Although our present-day Reservation boundaries are located some distance from the Missouri River, the river's east bank establishes the boundary of the Great Sioux Reservation, as defined in Article 2 of the Fort Laramie Treaty of April 29, 1868. We have a treaty claim to the Missouri. Moreover, we claim water rights to the Missouri River under the *Winters Doctrine*. Congressional support for the exercise of our water rights is evidenced by the passage of the Mni Wiconi Project of 1988, in which Congress authorized \$263 million for a rural water system from the Missouri River to the Pine Ridge Indian Reservation.

We have been very concerned with the past Corps of Engineers' actions on this issue. The previous Environmental Impact Statements that have been released contain inaccurate information about the nature and extent of Indian reserved water rights. There has been no discussion of the need to include Tribes such as the Oglala in the planning process, although the Pick-Sloan program is located within Lakota territory.

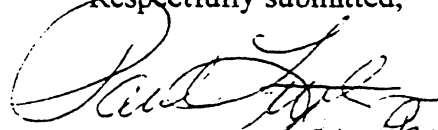
In addition, we are very concerned with Corps of Engineers' activities under the South Dakota Terrestrial Wildlife Habitat Restoration Act. The Secretary of the Army should exercise his considerable discretion under the statute to protect the Treaty rights of the Oglala, other Sioux Tribes, and the general Lakota tribal membership. There should be no transfer of COE land along the Missouri to the State of South Dakota, until its impacts are evaluated in the Master Manual DEIS and until a long-term plan is developed for protection of Native American cultural resources along the Missouri River. Instead, we are concerned that the Corps of Engineers is rushing to transfer land to the state, and is ignoring its obligations to our Tribe.

Letter to Colonel Meuleners
July 21, 1999
Page Two

We would appreciate the opportunity to discuss these issues with you. We are entitled to answers to these questions prior to implementation of the Master Manual Review and Update, and the Mitigation Act.

Please have your staff contact Frank Means, Oglala Tribal Land Committee Coordinator, at (605) 867-1106, for the necessary arrangements. Thank you very much for your consideration.

Respectfully submitted,


Paul Little *Vice Pres Land Comm*
Oglala Sioux Tribal Council

STANDING ROCK SIOUX NATION/U.S. ARMY CORPS OF ENGINEERS
MISSOURI RIVER MASTER MANUAL CONSULTATION MEETING
Prairie Nights, Standing Rock Sioux Nation
July 27 & 28, 1999
DRAFT Agenda

JULY 27th

1:00 p.m. **Opening Prayer - Tribal Elder**

Welcome & Introductions – Colonel Meuleners, U.S. Army Corps of Engineers, Deputy Division Engineer

Master Manual PDEIS Update – *Rosemary C. Hargrave*, Missouri River Master Manual Project Manager, US Army Corps of Engineers

- **Current Schedule**
- **Ongoing Rewrites to PDEIS**
- **Issues/Concerns at Consultation Summit (Feb. 1999) – Rapid City, SD**
 - ✓ Individual Consultation
 - ✓ Federal Trust Responsibilities
 - ✓ Water Rights
 - ✓ Impacts to Tribal Resources
 - ✓ Environmental Justice

4:00 p.m. **Adjourn for the Day**

JULY 28th

8:30 a.m. **Opening Prayer - Tribal Elder**

Introduction – Colonel Meuleners, U.S. Army Corps of Engineers, Deputy Division Engineer

Summary of Previous Day

Continuations of Previous Day Issues/Concerns

12:00 noon **Lunch (on your own)**

1:00 p.m. **Open Questions**

4:00 p.m. **Adjourn**

ROSEBUD SIOUX NATION

(Comments from the Tribal Consultation Summit – Feb. 23 – 24, 1999. Rapid City, SD)

CONSULTATION

Consultation between Tribes and Federal Agencies

- Will cultural issues be addressed when USACE consults with individual Tribes?

Trust in Working Relationships

- If the USACE follow the Tribal Policy principles things should be all right.

Development of Process/Master Manual Schedule and Issue

- *If the USACE follow the Tribal Policy principles things should be all right.*

Alternative Forums/Other Issues

- Economic development and compensatory issues. To see what other Tribes are doing with these issues.
- Identify legislative issues for Tribal governments.
- *Will cultural issues be addressed when USACE consults with individual Tribes?*

Agency Support

- Needs a copy of the 1944 Flood Control Act.

FEDERAL TRUST RESPONSIBILITIES

Treaty Issues (including history & breach of Indian Law)

- Treaties are our Bible
- Also concerned with the takings of lands.
- Issues of compensation are a treaty right and thus should have tribal representation.

ENVIRONMENTAL JUSTICE

Disproportionate Impact of Construction and Taking of Land and Operation of Dams on Tribal Land and Members.

- *Also concerned with the taking of lands.*

Benefits from hydropower Revenues not Received by Tribes.

- Utilities concerns. Feel that they do not have a clear understanding of what the process is. Neither do the common people. Want a utilities company and be the provided not the customer.
- De-regulate electricity and allow tribes more leeway. Integrated resource plan.

Benefits from Recreation/Tourism Revenues not Received by Tribes.

- Tourism is an issue. Alliance of Tribal Tourism Advocates.

Misc. Benefits/Inequities/Compensation

- Also want to be involved in telecommunications. Airspace has been auctioned off under an eminent domain.
- Reiterate that issues of compensation are important.

STANDING ROCK SIOUX NATION

(Comments from the Tribal Consultation Summit – Feb. 23 – 24, 1999. Rapid City, SD)

CONSULTATION

Consultation between Tribes and Federal Agencies

- Mni Sose has a representative from each of the tribes. It attempts to offer a consensus from the views of the tribes involved.

Trust in Working Relationships

- By recognizing the Tribal budget concerns, the USACE would be acknowledging that the Tribes have a legitimate interest.

Development of Process/Master Manual Schedule and Issues

- USACE needs to put in a provision which will help the Tribes financially with litigations, etc.
- Concerned that the current language distinguishing between operational and non-operational issues leaves the Tribes in a situation where the Tribes "just don't fit in."
- Need to reword the EIS so that there is forum for tribes to be recognized.
- Feels that the resources are an important issue and this needs to be addressed.
- Hard to gather necessary funds. Feels the USACE should be giving the Tribes, through Mni Sose, funding so that these issues can be resolved.

Alternative Forums/Other Issues

- Even though issues might be defined as non-operational, they are still valid concerns. Include us, don't exclude us.
- *Concerned that the current language distinguishing between operational and non-operational issues leaves the Tribes in a situation where the Tribes "just don't fit in."*

Agency Support

- USACE needs to let Tribes know more about the financial resources available.
- USACE needs to put in a provision which will help the Tribes financially with litigations, etc.
- In the budget there needs to be something included which addresses Tribes.
- *Feels that the resources are an important issue and this needs to be addressed.*
- *Hard to gather necessary funds. Feels the USACE should be giving the Tribes, through Mni Sose, funding so that these issues can be resolved.*

STANDING ROCK SIOUX NATION/U.S. ARMY CORPS OF ENGINEERS
MISSOURI RIVER MASTER MANUAL CONSULTATION MEETING

Prairie Knights Casino & Lodge

July 27 & 28, 1999

SIGN-IN SHEET

Name

Address

1. Erin Hargrave U.S. Army Corps of Eng., Omaha, NE
2. Marilyn J. Grandstaff SRST DWNR TRUMP L. & SON
3. Robert C. Whitehill, Jr. SRST DWNR Water Resources Tech
4. William Rutz SRST DWNR-THPO
5. Randy White SRST/DWNR FT THOMPSON MO
6. David Vader USACE/ Omaha, NE
7. Jim Winkler USACE " "
8. Kimberly O'Connor USACE KANSAS CITY DISTRICT
9. Errett Tom Eges SRF
10. Annette Yellowfoot SRST/DWNR
11. Shirley Mann DWNR
12. Peter Caposada PO Box 1453 Rapid City SD 57709
13. Neil Delcamp SRST- Reservation Resources
1-605-747-7351 FAX 747-2243
14. Fremont Feltz Resided Sioux Treaty Office
15. Ross Kinman Box 111 - FT Thompson SD
57339
16. [Signature]
17. Arday John Crow SRST/DWNR
18. Gary L. [Signature] PO 499 FT THOMPSON S.E. 57339
19. Robert M. [Signature] P.O. # 377 Fort Thompson, S.D. 57339
20. [Signature] P.O. Box 50 CCST S.D. 57339

STANDING ROCK SIOUX NATION/U.S. ARMY CORPS OF ENGINEERS
MISSOURI RIVER MASTER MANUAL CONSULTATION MEETING

Prairie Knights Casino & Lodge

July 27 & 28, 1999

SIGN-IN SHEET

JULY 1999

Name

Address

1. Wanda Wells C.C.S.T P.O. Box 534 Fort Thompson, SD
2. Joseph A. Walker P.O. Box 49 Ft Yates ND
3. COL Michael Meuleneri Corps of Engineers 12565 W. Center Rd, Omaha NE 68138
4. _____
5. _____
6. _____
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9. _____
10. _____
11. _____
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SPRING ROCK SIOUX NATION / U.S. ARMY CORPS OF ENGINEERS
 MISSOURI RIVER MASTER MANUAL CONSULTATION MEETING

Prairie Knights Casino & Lodge

July 27 & 28, 1999

SIGN-IN SHEET

Name

Address

Timothy O'DHAM	USACE / KANSAS CITY DISTRICT
Joe Hargrave	USACE / Missouri River Region
David Vader	USACE / Omaha District
Michael Meuleners	USACE / Missouri River Region Northwest Div
Arthur Waters	USACE / Omaha District / NRCC / KANSAS CITY
Dr. LeCompte	SRST / Res. Resources
Robert [unclear]	Tribal Council - Box 11 / Ft. Thompson S.M.
Robert Iron Eyes	SRF
Robert Feltus	Reserved Sioux Treaty Office
Jim Runtz	SRST - THPO - DWNR
Timothy Mawon	SRST / DWNR
Walter Yellow Foot	SRST / DWNR
Bob K. [unclear]	SRST / DWNR / ERMP
Jim [unclear]	CCST FT Thompson S.M.
Jim [unclear]	CCST FT Thompson S.M.
Wanda Wells	CCST " "
White [unclear]	Fort Yates District - SRST
Jim [unclear]	FT Thompson CCST

Peter Capossela
Attorney at Law
Post Office Box 1453
Rapid City, South Dakota 57709
605/342-3949 * Fax 605/342-8049

(Admitted in Nevada Only)

MEMORANDUM

TO: Chairman Murphy

FROM: Peter Capossela

DATE: July 26, 1999

RE: Corps of Engineers Preliminary Revised Draft EIS -
Missouri River Master Manual Review and Update

1. Current Master Water Control Plan

The Missouri River Master Manual contains the criteria by which the Corps of Engineers releases water at the Missouri River main stem dams. The three downstream dams - Gavins Point, Fort Randall and Big Bend, are comparatively small, and are operated in conjunction with one another. There is little fluctuation in their water levels. When water is released from Oahe Dam to Lake Sharpe, comparable releases are made from Big Bend Dam, and so on downstream.

The three larger upstream projects - Oahe, Garrison and Fort Peck - have much more storage space. The water levels fluctuate dramatically. The lay of the land is flatter in the upper basin, so water may be stored as it spreads out over what was once the prairie.

The Master Manual has rules for water releases for downstream navigation, to free flood control storage space for winter snow melt, and for hydropower production. Other project purposes such as fish and wildlife, water supply for consumptive uses and recreation, receive the benefits of the reservoirs, but water releases are not timed for these purposes. Consequently, as far as the project beneficiaries go, the fish and wildlife and recreation industries (primarily located in the upper basin), argue that they are forced to play second fiddle to navigation, flood control and hydropower, which primarily benefits the lower basin.

Of course, the Tribes receive virtually none of the benefits.

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The navigation season is March 15 - November 15. Normal navigation service navigation is 54 million acre-feet annually, with a target of 35,000 cfs per day. These releases start at Gavins Point, equal releases are made from Fort Randall and Big Bend, and then stored water at the large reservoirs upstream re-fill the downstream reservoirs.

Water is thus drained from the upstream reservoirs from March until November. By November, the levels are low, and there is storage space for snow melt. Lake levels remain low until February or March, when the snow melt begins to re-fill the reservoirs. Then the process starts all over.

This is why the Corps of Engineers' Missouri River operations affect the environment at Standing Rock - Lake Oahe is used to store water to operate an entire 25,00 square mile drainage basin.

There are localized issues. Sometimes the reservoirs' tailwaters' are lowered during winter, to free ice jams. Sometimes a "spring rise" of water is released below Gavins Point, because when it subsides it deposits sand for sand bars for Terns and Plovers, two endangered species whose habitat has been destroyed by the dams.

2. Background - Master Water Control Manual Review and Update

The drought of the late 1980's resulted in dramatic lowering of reservoir levels of Oahe, Lake Sakakawea and Fort Peck. The river nearly subsided to the old main channel. The intakes at the Fort Yates water system and irrigation system were affected. There was no fishing from the shore on the Reservation - the water was too far away.

South Dakota, North Dakota and Montana filed a lawsuit against the Corps, for an injunction against continued release from the upstream reservoirs. *State of South Dakota v. Nedham*. Civ. No. 91-26 (D.N.D. 1991). A restraining order was issued but immediately overturned on appeal, with the appeals court ruling that the Corps has considerable discretion to operate the dams as it sees fit, under the 1944 Flood Control Act.

Nevertheless, the Corps agreed to review the Master Manual, and the litigation has been stayed pending the "Master Manual Review and Update." The Corps is conducting an Environmental Impact Statement on Missouri River operations, under the National Environmental Policy Act (NEPA).

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NEPA requires an agency to take an "interdisciplinary" approach to environmental decisionmaking. The regulations require that there be a scientific and analytical basis for comparison of the affect of alternative courses of action. 40 CFR 1502.16. There must be a discussion of "the environmental effects of alternatives, including the proposed action. *Id.* Where "there is incomplete or unavailable information, the agency shall always make clear that such information is lacking." 40 CFR 1502.22. The agency must remedy the lack of information, if practicable.

In the early 1990's, the Corps of Engineers embarked upon its NEPA study on the Missouri River, with no knowledge of Indians. The Corps has come a long way - but it still exhibits no knowledge of Indians. Yet their operations affect the environment at Standing Rock, significantly.

The major actions under the NEPA study are summarized as follows -

- * September, 1990 - Upper basin states file lawsuit against Corps
- * 1991 - Corps announces EIS on Missouri River operations
- * July, 1993 - Corps releases Preliminary Draft Environmental Impact Statement
- * September 30, 1993 - Standing Rock made a keynote presentation at the Corps of Engineers meeting in Omaha, with representatives of four Tribes, ten states, and five federal agencies, and there was broad agreement that Indian reserved water rights should be incorporated in the Master Water Control Manual EIS
- * July, 1994 - Corps releases Draft EIS, selecting Preferred Alternative for Missouri River operations.
- * 1996 - Corps scraps Preferred Alternative, and announces delay to sort our "Operational" issues from "Non-operational" issues, and additional studies for lower basin concerns. Tribal concerns are all denominated as "non-operational."
- * August, 1998 - The Corps released a Preliminary *Revised* Draft EIS (PRDEIS) in July, 1999. The PRDEIS dispensed with the Preferred Alternative, and contains a new set of Fish and Wildlife and Water Conservation alternatives, a Mississippi River alternative, and the Current Water Control Plan.

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3. 1998 PRDEIS

Last August, the Corps of Engineers released its Preliminary Revised Draft EIS for the Missouri River Master Water Control Manual Review and Update. The Corps released the "PRDEIS" despite numerous issues remaining unresolved. The PRDEIS contains 64 alternatives, based upon 16 representative alternatives, in four categories. The four categories are -

1. Current Master Manual
2. Conservation Alternatives

These alternatives emphasize keeping water in the upper basin reservoirs, especially during the late summer and early fall, at the expense of navigation service and downstream fish and wildlife in the summer and fall. There are numerous alternatives within this category, which have varying levels of navigation service.

3. Fish and Wildlife Alternatives

These alternatives emphasize protection of habitat for birds and wildlife in the lower basin. They provide for a spring rise in the lower basin, to create sand bars for nesting areas. The reservoir levels get lowered late in the season to maintain water flows in the lower basin for fish and wildlife. There are numerous alternatives within this category, which have varying levels of navigation service.

4. Mississippi River Alternative

This alternative provides for targets for Mississippi River inflows at St. Louis, to support Mississippi River navigation and uses.

There are four variables built in the computer model -

1. Intrasystem regulation of water amongst Lake Oahe, Sakakawea and Fort Peck

The states want to draw down the reservoir levels of one of the three large reservoirs once every three years on an alternate basis, in order to maintain higher reservoir levels over the long-term. The theory is it will improve vegetation at the outer crests of the reservoir, to improve fish spawning habitat. At present, the releases are generally timed in conjunction with one another. The modified intrasystem regulation concept would change this, and the large reservoirs would be drawn down in alternating years. The upper basin states want this. The Tribes have not been consulted. It definitely affects reservoir levels, and hydropower and other values.

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2. Different Levels of Navigation Service

They have developed what they call navigation guide curves. This means varying the navigation season and length of service. The lower basin states reject all alternatives with lower guide curves.

3. Permanent Pool Levels

The permanent pool is the bottom pool of each reservoir. At present, the total storage in the permanent pools in the six reservoirs is 18.1 million acre-feet. This is basically the old main channel of the river. The Conservation alternatives provide for an increased Permanent Pool level, to store more water especially late in the year, for recreation. The lower basin states oppose this.

4. Spring Rise

The Preferred Alternative in the 1994 DEIS contained a spring rise along the lower stretch of the river, to more closely mirror the spring flooding which occurred naturally. This means that the reservoirs get drawn down in the spring, to release water. The water levels in the lower stretch of the river would increase in the spring, creating higher sand bars for endangered species' nesting. This would mean less water for either navigation later in the year, or to maintain reservoir levels later in the year. The lower basin farmers oppose this, because the spring rise could impede the draining of their fields, which could flood.

Unfortunately, the Corps is pushing ahead. It wants comments by interested parties by October 1, in order to finalize the draft EIS in December, and hopefully complete the EIS next year.

None of the tribal issues are getting addressed. The narrative on Indian water rights implies that unquantified rights are not yet vested with the Tribes. This is dangerous for the Tribes, and the requests for clarification have been ignored.

Meanwhile, cultural resources protection remains denominated as "non-operation," getting the Corps off the hook as far as they are concerned. In my opinion, the Corps remains vulnerable to a National Historic Preservation Act lawsuit on this ground, and perhaps for violating the National Environmental Policy Act, as well.

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4 Role of States in Master Manual Review and Update

The Corps of Engineers is relying upon the Missouri River Basin Association (MRBA) to identify consensus-based principles for the development of a preferred alternative. The MRBA represents eight Missouri River basin states, that claim to be affected by the Master Water Control Manual.

Unlike the Indian Nations, none of these states possess water rights to the Missouri River main stem. They have no propriety claims to the bed of the Missouri.

The collaborative process by MRBA is troublesome. It is a political exercise designed to develop a compromise between the diverging economic interests of the lower basin - navigation and agriculture, the upper basin - recreation, and endangered species protection. For example, South Dakota states in the *Draft South Dakota Alternative, (May 24, 1999)* that "Most of the conflict between the upper and lower basin states can be traced to competing interests of navigation and recreation."

That is the non-Indian perspective. Standing Rock's concerns remain outside of this conundrum.

MRBA is advocating adaptive management principles whereby water remains stored during the first year of droughts for full navigation service in subsequent years. This is unworkable. There is an assumption that water must be stored in one year in anticipation of future drought years. The water would be stored in Lake Oahe, on the Standing Rock Reservation. Similarly, MRBA's recommendations call for a spring rise at Fort Peck for the protection of fish and wildlife in the river stretch to Lake Sakakwea's tailwaters directly and disproportionately impacts the Fort Peck Indian Nation. Yet there is negligible consultation with Standing Rock, Fort Peck and the other Tribes.

MRBA's "44-28" plan would reduce navigation service with declining amounts of water stored in the reservoir system's permanent pool. There would be full navigation service with 56 million acre-feet of permanent pool storage, with minimum service at 52 MAF. South Dakota proposes to end navigation support if storage levels drop to 41 MAF. Missouri proposes to split water shortages, and agrees to a spring rise in above-average years.

These proposals fail to account for flaws in the Corps of Engineers modeling. There is no consideration in the model of the value of the proprietary rights of the Tribes, or of the impacts on the Indian Reservations on the main stem. Hydropower values are understated. The values do not take into

Memorandum to Chairman Murphy
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account lost economic opportunities on the Reservations, from the destruction of land and the suppression of Indian water development through the Pick-Sloan program. The costs incurred on the Reservation are generally ignored.

5. Recommendations for Response to COE
 1. Revise treatment of Indian water rights.
 2. Comprehensive measurement of the impacts of the consumptive use by the Tribes of reserved water rights. The Corps of Engineers has estimated that under the Current Water Control Plan the depletion of 7.1 MAF cuts off project functions under the current model. This necessitates far greater depletion analysis. Significantly, it illustrates that the Indian Tribes possess propriety rights to the water resources arrogantly negotiated by MRBA and the Corps.
 3. Identify specific impacts to specific sites, with mitigation measures, and develop comprehensive legal strategy under NAGPRA and National Historic Preservation Act.
 4. Identify impacts on plants along the Missouri River that are culturally important have ceremonial uses.
 5. Separate out program impacts on Tribes from general impacts.
 6. Require compliance with Executive Order on Environmental Justice.
 7. Protect in-takes on Standing Rock Indian Reservation.
 8. Identify need for additional legislation to remedy use of Tribal land and water for Pick-Sloan program.
 9. Other concerns as identified.

I shall follow-up in developing a response document to the Corps, with the staff and Economics Committee.

DE-COLONIZATION

Webster's Ninth Collegiate Dictionary's definition of Colonialism and De-colonization are:

COLONIALISM: control by one power over a dependent area of people: a policy advocating or based on such control...

DE-COLONIALIZATION: An act of de-colonizing; to free from colonial status...

The Americas were Indian country homelands before the white man or any other people of color ever made it across the Atlantic or Pacific Oceans. When our homelands were first stumbled upon there were governments, religions, languages, customs, cultures and homelands on which our people resided, but due to the white mans firearms, horses, diseases, liquor, and greed, our people were induced into their way of life which include, the turning against our own people and by the creation of a tribal government based on their methods, laws and control.

Gradually, as The United States Of America was formed with the use of our methods of government, there had been discussion amongst the whitemen that it would be extremely necessary to control and subject our people to their laws. Once we became subjected to their laws and polices the many nations of our people were consolidated under the term "Indians" or "Native Americans". We were no longer the Lakota, Dakota, and Nakota, or the Diné. Their religions were imposed upon our people by the taking of our children and sending them to religious camps known as Indian missions where our children were indoctrinated into thinking that our religion was bad and theirs was the only religion acceptable.

After the United States sued for peace and offered to enter into a treaty with our people, our grandfathers prayed and conferred on how their grandchildren, down to seven generations, could be protected and provided for. They agreed to the boundaries as set by the 1851 Treaty but this was diminished to the east bank of the Missouri River. From 1858 forward, The United States determined that there would be no more treaties, but than they still wanted more lands so they decided to develop an agreement on which more land was ceded from our homelands. These were the 1877 and the General Alottment Act of 1877, agreements which were approved by both houses of Congress, and are illegal based on Article 12 of the Fort Larmie Treaty of APRIL 29, 1868.

The United States still wanted more land so they utilized their Congress to approve of legislation in which lands considered excess within the reservations were put up for sale to non Indians to homestead. These acts of Congress did not have the support of the people it affected, as its purpose was to diminish their homelands.

Our people are still facing the diminishment of our homelands by the workings of the Federal Governments through the Bureau of Indians Affairs and its States. Our Lakota, Dakota, Nakota Oyate must unite, and also, by working with the elected IRA Tribal Governments there must be strategies developed to curb the taking of our lands.

For over five hundred years our people were subjected to this method of survival; but, we still believed in our way of life and what our grandparents taught us in the forms of our stories and how things were before the white man came. We did not have cancer, the changing of our sexes, or diabetes; because through our medicines and spiritually we were able to overcome these illnesses. By gathering our people and placing them onto reservations the white man took our lands and provided our food through commodities, this is how we were to survive. Many of our people refused to live in this manner; however, there were those people who agreed that in order for our people to overcome this method of treatment, we must temporary accept this way of life.

To formally impose this way of life upon our people, the white man pushed treaties between our nations which provided for the boundaries on our homelands, in order for what each nation must do to live in harmony with each, that these treaties are the supreme law of the land according to the whitemans own constitution which is the basis of their government.

While ratifying the treaties entered into good faith with the Indian Nations, the Congress of the United States further determined that they had the "plenary power" to decide what its policies would be, that are and will be affecting our people based on the Indian Commerce Clause, Article 1, Sec.8 C.. 18, U.S. Constitution, which is the only express grant of federal power over Indians: "Congress is authorized to regulate Commerce... wth the Indian Tribes."

To solidify its positions, the United States Supreme Court decided on behalf of the United States that the Indian Nations were "Dependent Sovereign Nations" within the United States while other decisions determine that the laws of the stronger power are applicable to the lesser power. We must understand that the way of manifest destiny are determined by the stronger power prior to the application of its laws.

This Manifest Destiny determined that it was no longer necessary or convenient for the federal government to keep Indian reservations separate and apart under trust status or tribal ownership. No opportunity for self-rule are granted, but in name only. Today terms such as self-governance and self-determination are utilized to provide a sense of "free choice of one's own acts without external compulsion". Each grant or contract to provide such self-determination or self-government still requires approval by the stronger power.

Additionally, the Federal government has been diminishing the congressional appropriations to Indian Nations in many areas to include any technical assistance toward development. Majority of natural resources and Indian water rights development requests utilizing Federal funds are not authorized by Congress. The trust responsibility at the local level is greatly decreased by diminishing the Federal funds allocated to the agencies. It has been indicated that the Federal trust responsibility over Indian rations established by treaties will be terminated by the lack of appropriations of funds to allow Indian Nations to survive.

If this is the intent of the Federal Government, it can enfranchise the Dakota, Lakota / Nakota Nations to develop a "decolonization plan" to be negotiated between the two parties.

This Decolonization Plan would be similar to a treaty between two nations with an understanding that the stronger Nation (United States) would work with the weaker Nation (Dakota/Lakota) to strengthen and develop its "nation building" effort. This assistance would be for a determined and agreed upon period between the two parties in which the weaker party would accept monetary/economic/social/capacity building assistance for a period of time. At this period, the Dakota/ Lakota Nation could then become a member of the International community with the authority to become a member of the United Nations.

During this period the Dakota, Lakota/Nakota people would initiate and develop their own educational, judicial, legislative, economical, agricultural/natural resource revival, and long range plans in Nation - building. It would also develop the administration of this Nation - building by its own methods.

However, our people must understand the intent of the Federal government is to assimilate the Indian people into the mainstream of America when they are totally different from the people who migrated to the United States. Through its congress, there will be diminishment of appropriations of Federal funds, then there will be allied efforts between the Federal government and States to pursue application of state jurisdiction upon our people and infringe upon our lands by the application of their laws.

Each of our Dakota, Lakota and Nakota Nations must provide for a Treaty office to pursue the education of our people of the treaties and to continue the original and separate ways of our people.

If our Nations are to survive, its contingent upon us to ensure its survival! It cannot be the responsibility of a few people. It should and is the responsibility of every one of us. If we can contribute in our own way so be it. It can be done.

RESOLUTION NO. _____

WHEREAS, the Standing Rock Sioux tribe is an unincorporated Tribe of Indians. Having accepted the Indian Reorganization Act of June 18, 1934. With the exception of Article 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1(a), 1(c), 1(H) and 1(j) is authorized to negotiate with Federal, State and local governments and other on behalf of the; is further empowered to protect and preserve the health, Education and general welfare of the; is the members of the Tribe and its members; and is further empowered to authorize and direct subordinate boards. Committees and tribal officials to administer such affairs of the Tribe and to carry out the directives of the Tribal Council; and is further authorized to manage, protect, and preserve the property of the Tribe and natural resources of the Standing Rock Sioux Indian Reservation; and

WHERE AS, The Standing Rock Sioux Tribe has been diligently working to obtain the return of excess lands within the reservation from the Army Corp of Engineers; and

WHERE AS, the Army Corp of Engineers has the administrative capability to return excess lands, contract and enter into agreements with the Standing Rock Sioux Tribe; and

WHERE AS, The Army Corp of Engineers has a Trust responsibility to the Tribe and the responsibility of the Treaties with The Great Sioux Nation to preserve "peace" with the Tribes, and

WHERE AS, The excess lands can be transferred into trust by the Army Corp of Engineers without legislation and has the ability to contract with the Tribes under 638; and

NOW THERE FORE be it resolved, that the Standing Rock Sioux Tribe hereby requests the Army Corp of Engineers to:

1. Administratively transfer all excess Army Corp of Engineers lands on the Standing Rock Sioux reservation back to the Standing Rock Sioux Tribe, to be held in trust for the tribe.
2. Provide a contract to the Standing Rock Sioux Tribe, immediately, for maintenance on the Army Corp of Engineers lands on the Standing Rock Reservation,
3. Provide a contract to the Standing Rock Sioux Tribe, immediately, for enforcement on all Army Corp of Engineers lands on the Standing Rock Reservation, and
4. Administratively transfer "Jeds Landing" Indian Memorial (North and South) back to the Standing Rock Sioux Tribe, immediately.

5. Provide a contract on all Army Corp of Engineers lands on the Standing Rock Reservation for the implementation and enforcement of the Environmental Protection Act and Native American Graves Protection Repatriation Act, and

6. Provide the necessary financial assistance to carry out the identified, activities of rip rapping, erosion control and mitigation of all returned areas and contracted areas.

BE IT FURTHER RESOLVED, that appropriate meetings be held and scheduled with the Army Corp of Engineers for the transfer of excess lands and contracts identified, as soon as possible; and;

BE IT FURTHER RESOLVED, that no transfer of lands or leasing of Army Crop of Engineers recreation lands occur until Standing Rock Sioux Tribes issues of concern are satisfactorily settled, and

BE IT FURTHER RESOLVED, that the Chairman and representatives of the Standing Rock Sioux Tribe are hereby instructed and authorized to continue moving forward with the administrative transfer of excess lands and requested contracts, and;

Be it further resolved, that the Chairman and Secretary are hereby authorized to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

FORT PECK ASSINIBOINE & SIOUX NATIONS/U.S. ARMY CORPS OF ENGINEERS

**MISSOURI RIVER MASTER MANUAL CONSULTATION MEETING AGENDA
POPLAR, FORT PECK RESERVATION
AUGUST 6TH, 1999**

9:00 a.m.

Opening Prayer – *Carl Four Star*, Tribal Elder

Welcome & Introductions – *Larry Cieslik*, U.S. Army Corps of Engineers, Chief of Reservoir Control Center, Missouri River Region

Master Manual PDEIS Update – *Rosemary C. Hargrave*, U.S. Army Corps of Engineers, Missouri River Master Manual Project Manager

- Current Schedule
- Ongoing Rewrites to PDEIS
- Issues/Concerns at Consultation Summit (Feb. 1999) – Rapid City, SD
 - ✓ Individual Consultation
 - ✓ Federal Trust Responsibilities
 - ✓ Water Rights
 - ✓ Impacts to Tribal Resources
 - ✓ Environmental Justice
- Higher Spring Service

12:00 p.m. – 1:00 p.m.

Lunch

4:30 p.m.

Adjourn

Inventory of Peck 6/1/99
 Peck, NH

<u>Name</u>	<u>Representing</u>	<u>Phone</u>
Fox Houndgrave	U.S. Army / COE	402-697-2527
KIMBERLEY OLOHAM	U.S. Army Corps of Engineers	816-983-3568
DARIN McMURRAY	COE - FT. Peck Lake	406/526-3911
EDWARD Gouymier	FT. PECK TRIBES, Water Commissioner	653-2091
RUCE BAUER	FT. Peck Fish & Wildlife	768-5305
Wendy Salzman	FT. Peck Irrigation	653-1752
CARL FOURSTAR	FT. PECK TRIBES, WATER OFFICE	768-5155 x2
W. Resources	FT. Peck Tribes, WRO	406-768-5155
Boone A. Whitmer	MRBA & CRM Council	406-525-3289
David F. Vader	USACE, Omaha District	(402) 221-3988
Roy McAllister	USACE, Missouri River Region	(402) 697-2479
LARRY CIESLIK	USACE, Missouri River Region	(402) 697-2675
Ray E. Coe	FOOT PECK TRIBES	406-768-5155
HENRI HEDDERS	" WATER RESOURCES	" " "
Raymond Ogle	FPT Species Projects	" " " ex 314
Stoney Finkel	BIA Fort Peck Agency	(406) 768-5112
WALTER CLARK	FT Peck Tribes	406 768-5155
CALEB SHIELDS	FT. PECK TRIBES	406-768-5155
John Shields	FT Peck Tribes	(406) 768-5155
Paula Shields	" " "	406-768-5155
Barbara Burskiel	" " "	" " "

FORT PECK ASSINIBOINE & SIOUX NATIONS/U.S. ARMY CORPS OF ENGINEERS

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- Ongoing Rewrites to PDEIS
- Issues/Concerns at Consultation Summit (Feb. 1998) – *D. Reid O'Byrne*
 - ✓ Individual Consultation
 - ✓ Federal Trust Responsibilities
 - ✓ Water Rights
 - ✓ Impacts to Tribal Resources
 - ✓ Environmental Justice
- Higher Spring Service

12:00 p.m. – 1:00 p.m.

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Adjourn

consultation meeting 6/1/99
 Peoria, MO

<u>name</u>	<u>Representing</u>	<u>Phone</u>
Lox Handgrave	U.S. Army COE	402-697-2527
KIMBERLEY DOWNS	U.S. Army Corps of Engineers	816-983-3568
DARIN McMurray	COE - FT. Peck Lake	406/526-3411
EDWARD Gaudin	FT. PECK TRIBES, Water Commissioner	653-2091
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James Ryzne	FT. Peck Irrigation	653-1752
ARL FOURSTAR	FT. PECK TRIBES, WATER OFFICE	768-5155 x2
DR. RESOURCES	FT. PECK TRIBES, WRO	406-768-5155
Joan A. Whitmer	MRBA & CRM Council	406-525-3289
David F. Vader	USACE, Omaha District	(402) 221-3988
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ARRY CIESLIK	USACE, Missouri River Region	(402) 697-2675
Ray Cieslik	FOOT PECK TRIBES	406-768-5155
LENKI HEADRESS	" WATER RESOURCES	" " "
Raymond Ogle	FPT Special Projects	" " " 22312
Stoney Hotkell	BIA Fort Peck Agency	(406) 768-5112
WALTER CLARK	FT Peck Tribes	406 768-5155
		406-768-5155
CALEB SHIELDS	FT. PECK TRIBES	406-768-5155
John [unclear]	FT Peck Tribes	(406) 768-5155
Paula [unclear]	" " "	406-768-5155
Barbara Birdsall	" " "	" " "

**FORT PECK TRIBE
AND
U. S. ARMY CORPS OF ENGINEERS**

**MISSOURI RIVER MASTER MANUAL
CONSULTATION MEETING**

AUGUST 6, 1999

Missouri River Master Manual Review & Update

Current Approved Schedule

- Preliminary Revised Draft EIS (PRDEIS) - August 1998
- PRDEIS Tribal & Public Coordination Period - January 1999
- Revised Draft EIS (RDEIS) - December 1999
- RDEIS Tribal & Public Comment Period - March 2000
- Final EIS - December 2000
- Washington Level Review - May 2001
- Record of Decision (ROD) - July 2001
- Revise Master Manual - July 2001
- Develop AOP - December 2001
- Implement Selected Plan - March 2002

Review of Basin Alternatives

- Flow Alternatives Received
 - State of Missouri
 - State of South Dakota (2)
 - Richard Opper Alternative
 - Missouri River Natural Resources Committee
 - Senator Kerrey Split Navigation Alternatives (3)
- Anticipated Flow Alternatives
 - MRBA Flow Alternative
 - Tribal Flow Alternative
- Corps Review & Impact Analysis
- Corps Selection of Preferred Alternative

RDEIS Tribal Consultation

- Consultation Summit Commitments - February 23-24, 1999
 - Individual Government to Government Consultation
 - Financial Assistance to Mni Sose for Development of Tribal Flow Alternative
 - Rewrite RDEIS to include Tribal issues & impacts
- Letter to Tribal leaders “offering” to consult
 - Mailed on June 8, 1999
 - Colonel Meuleners Authorized to Consult for ACOE

Tribal Consultation

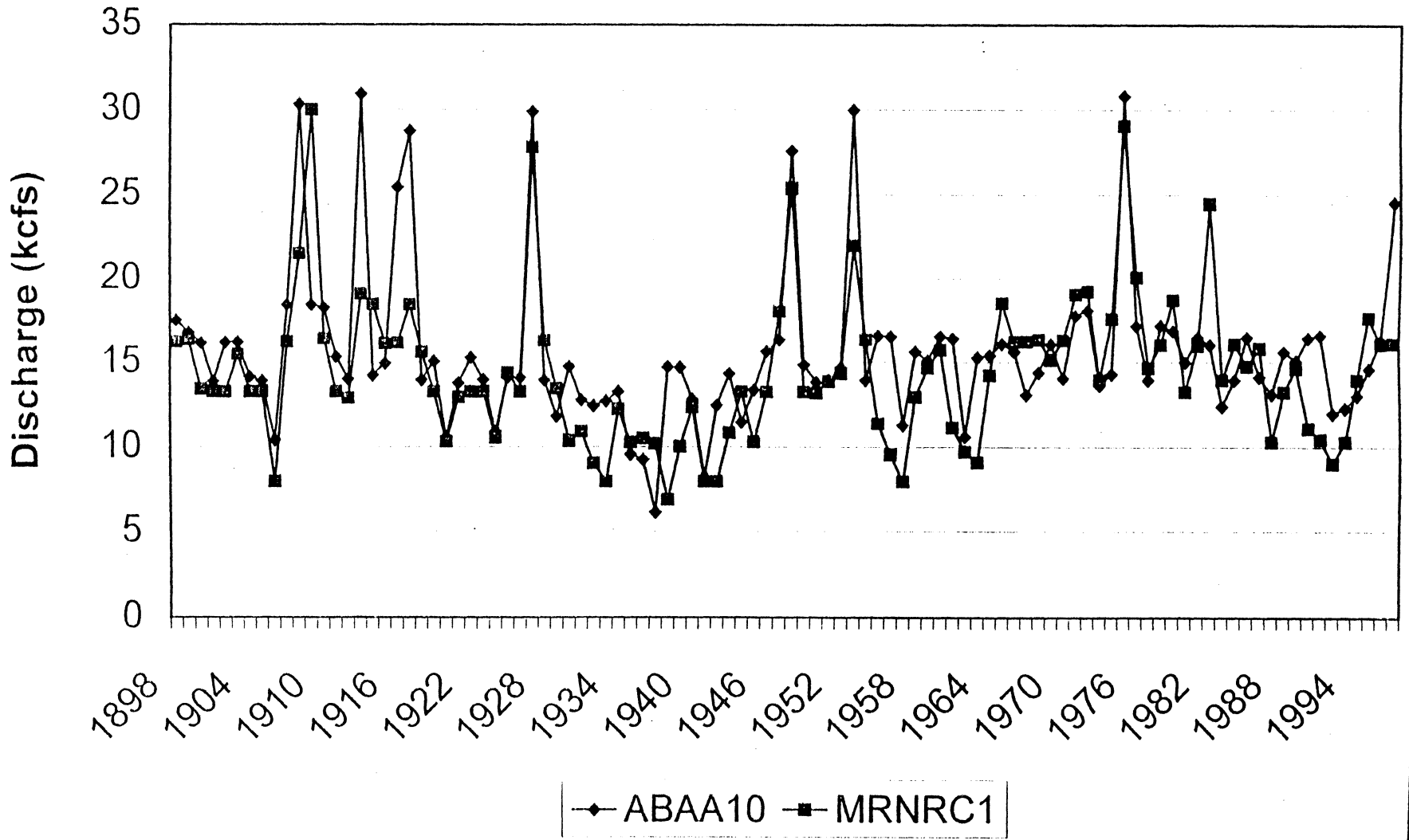
(Continued)

- Consultation for flow related issues on-going through the Record of Decision (July 2001)
- Consultation for other non-flow related issues continuing beyond the Record of Decision

Tribal Coordination Update

- Incorporation of Tribal Issues & Impacts into RDEIS - Ongoing
- Contract awarded to Mni Sose Intertribal Water Rights Coalition to develop a “Preferred Tribal Alternative”
- Ongoing coordination with Mni Sose Technical Team to provide support for Tribal Alternative Mission.
 - Initial Meeting, Rapid City, SD, May 13-14, 1999
 - Technical Meeting, Omaha, NE, July 8, 1999

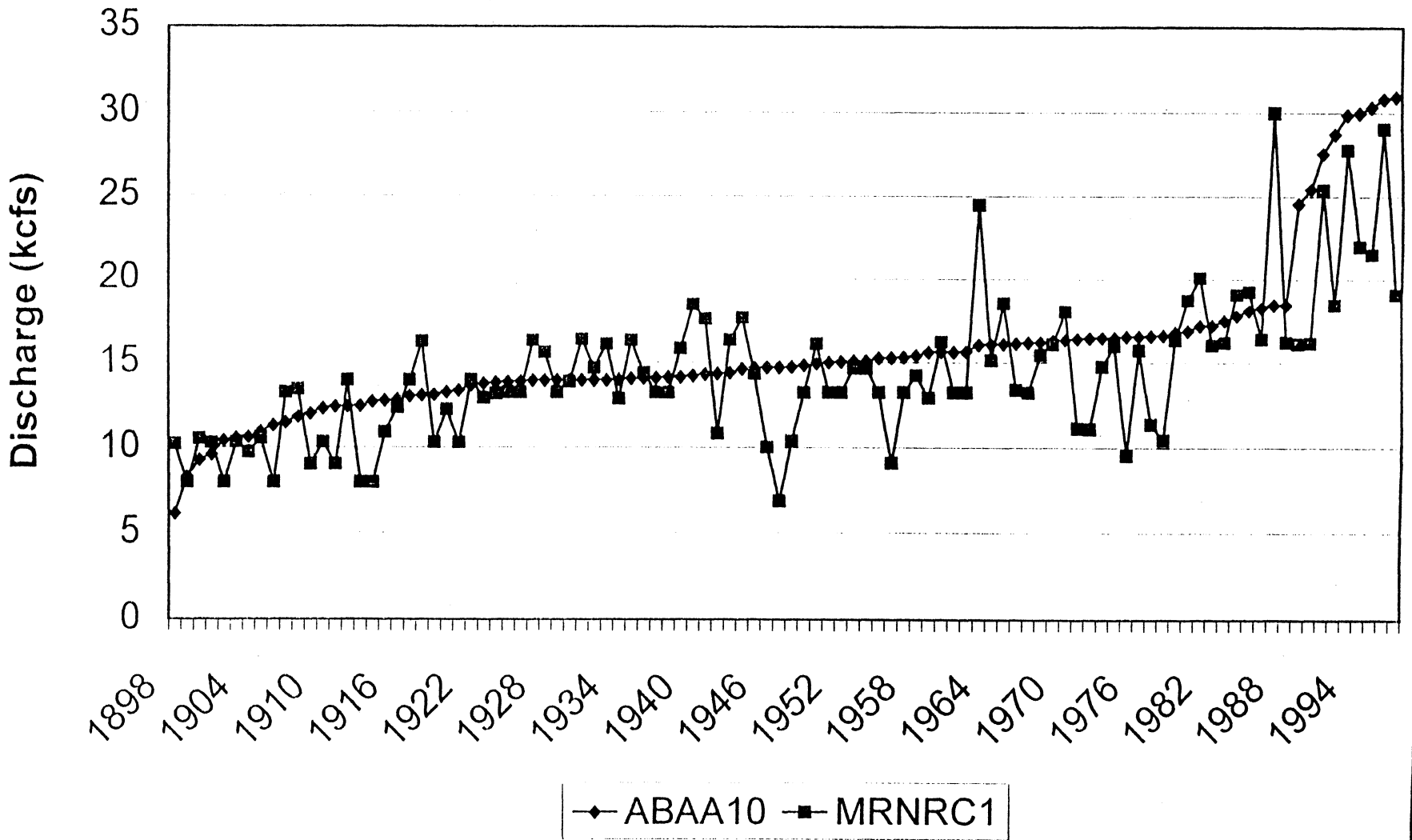
Comparison of Discharges from Fort Peck Dam



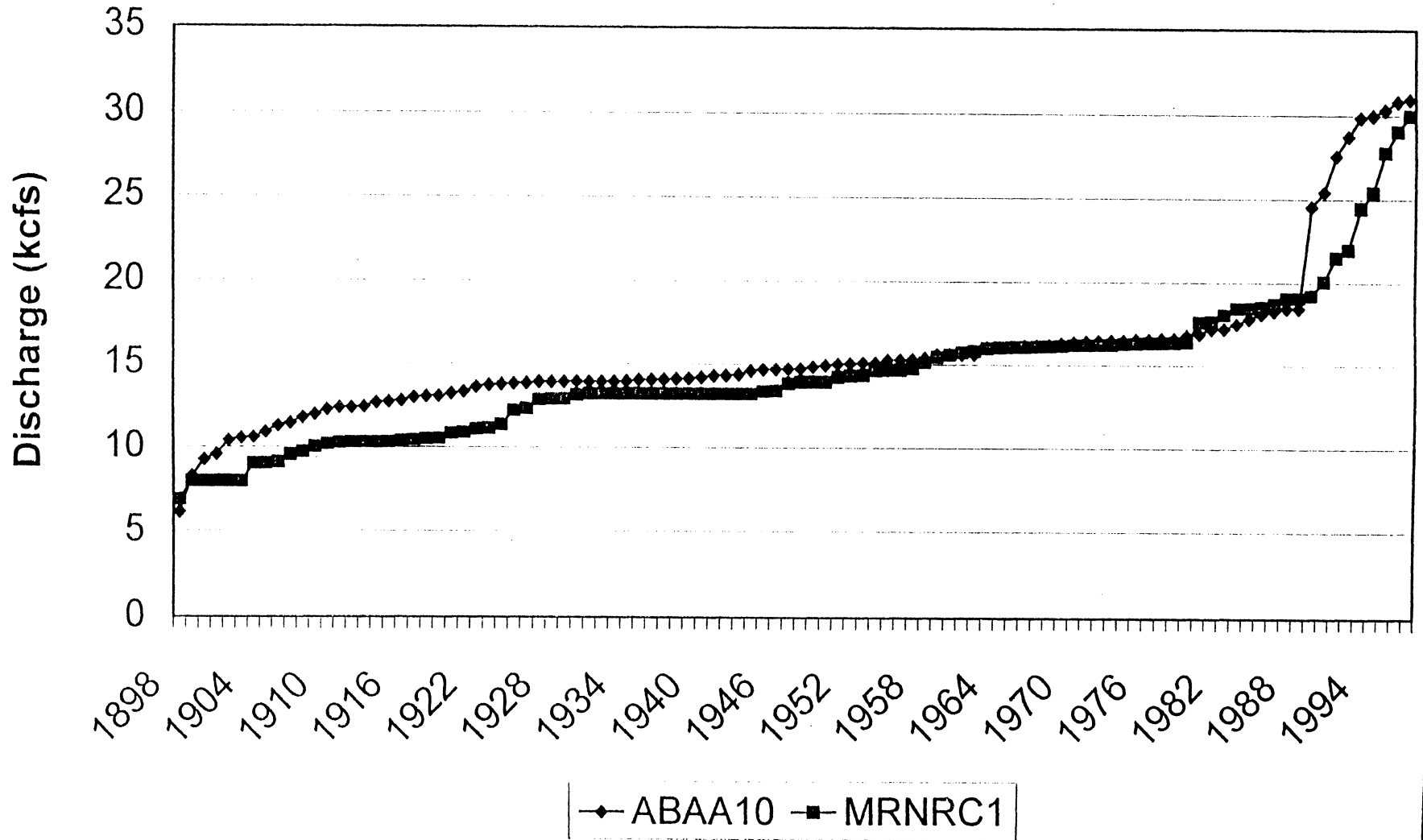
A1-483

MAX 1

Comparison of Discharges from Fort Peck Dam



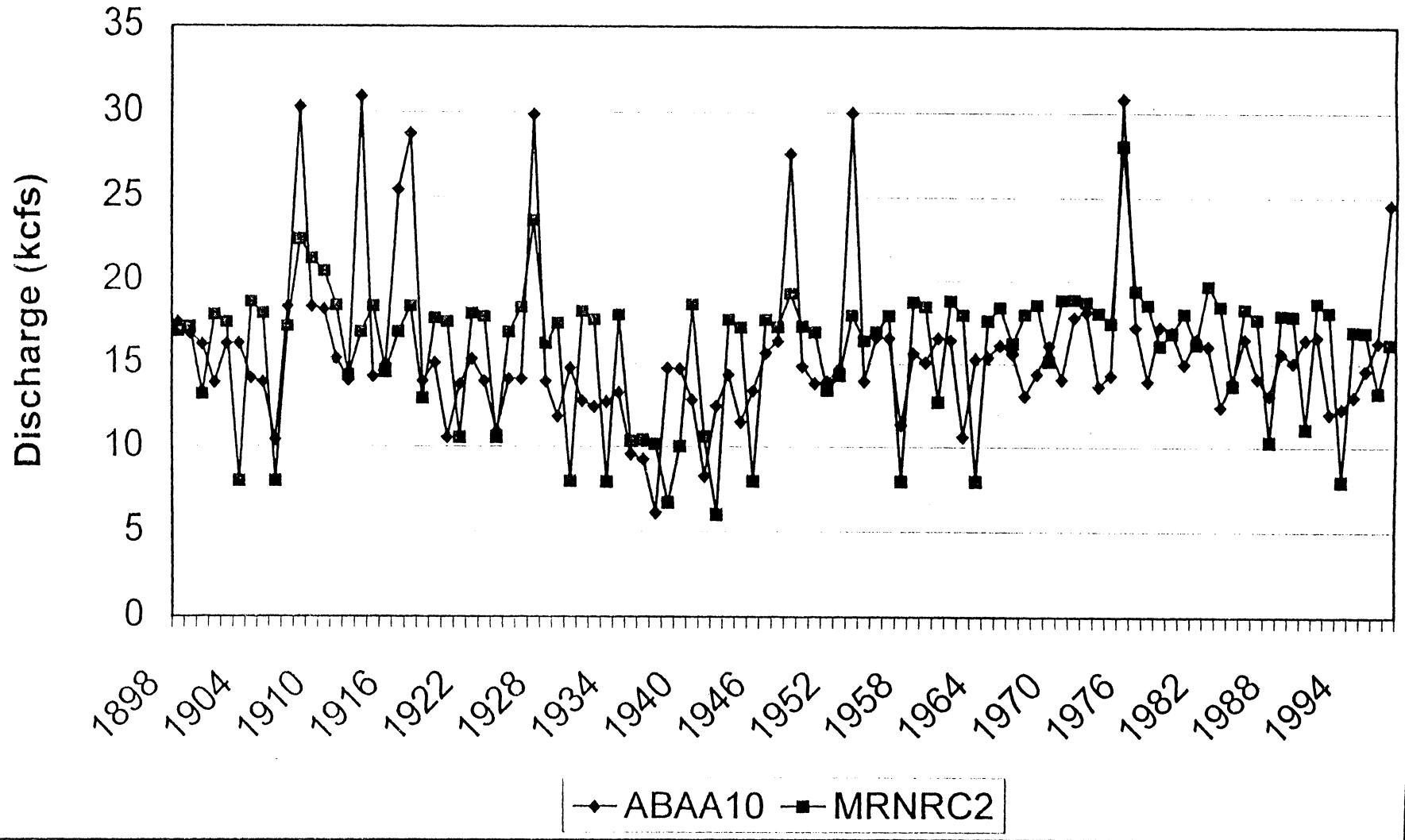
Comparison of Discharges from Fort Peck Dam



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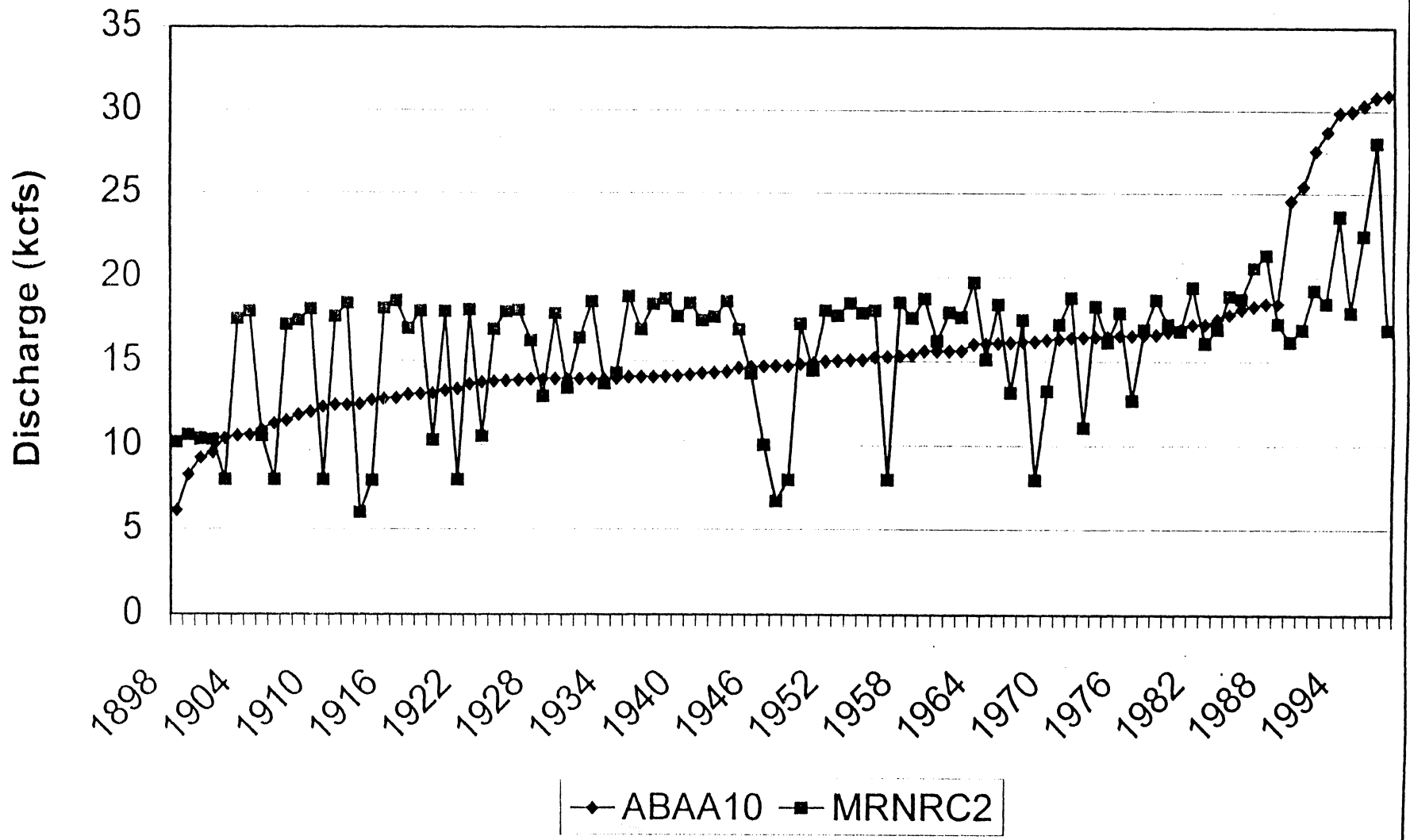
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Comparison of Discharges from Fort Peck Dam



MAX 4

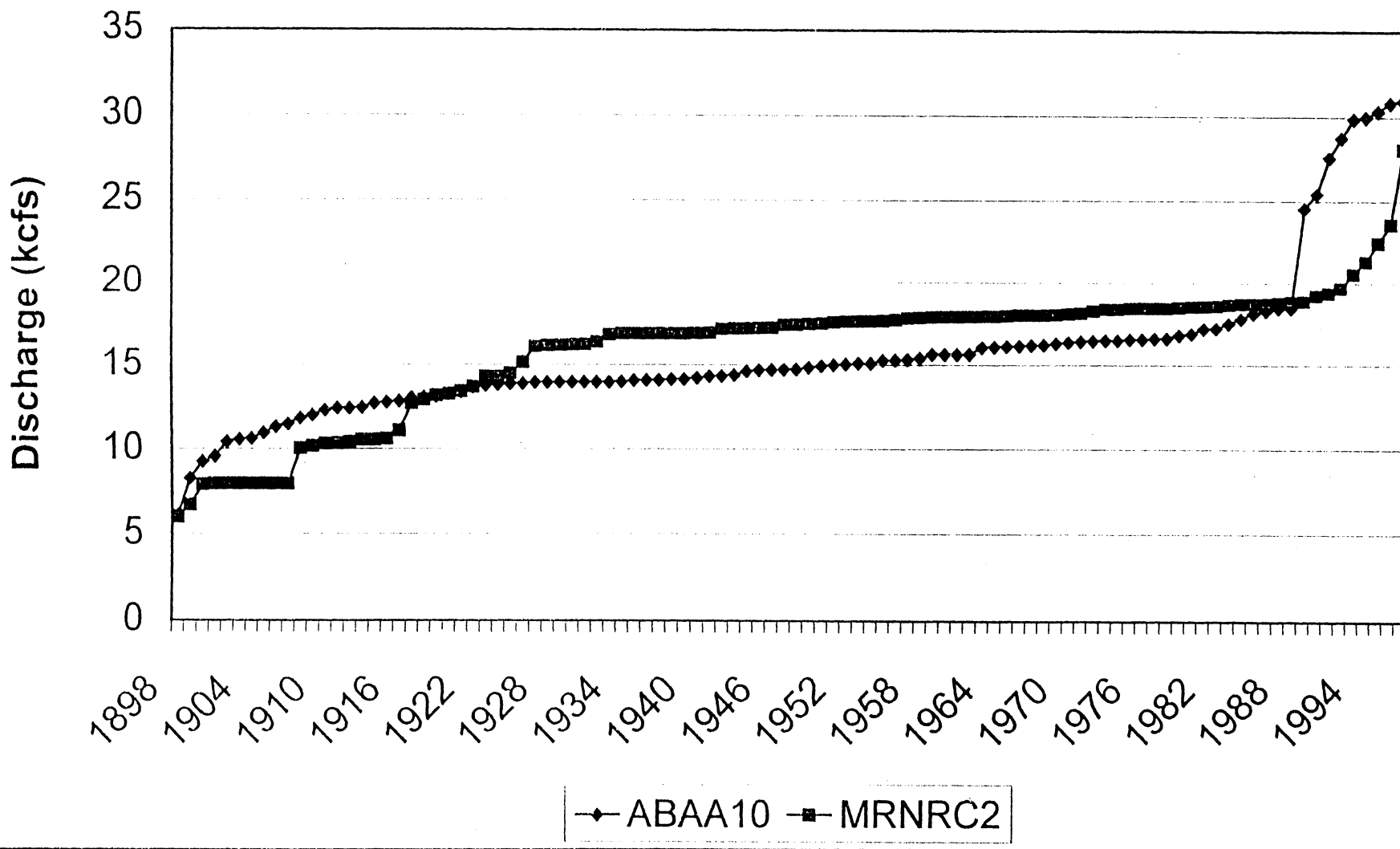
Comparison of Discharges from Fort Peck Dam



A1-487

MAX 5

Comparison of Discharges from Fort Peck Dam





United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Rocky Mountain Region
316 North 26th St.
Billings, Montana 59101

IN REPLY REFER TO:
Water Resources
Code 370

04 OCT 1999

Brigadier General Robert H. Griffin
U.S. Army Corps of Engineers
Northwestern Division
220 Northwest 8th Avenue
Portland, Oregon 97209-3589

Dear Brigadier General Griffin:

The Bureau of Indian Affairs, Rocky Mountain Regional Office (BIA-RMRO), appreciates the opportunity the United States Army Corps of Engineers (Corps) has provided to participate in the various phases leading to a revised Missouri River Master Water Control Manual. The BIA-RMRO commends the Corps' effort of fostering consensus-building through government-to-government consultation with Indian tribes of the Missouri Basin. This is certainly a positive step in facilitating improved government-to-government relationships with Missouri River Basin tribes.

The BIA-RMRO submits the following position statement on the revised draft Environmental Impact Statement and its relation to the water rights of the Assiniboine and Sioux Tribes, the Assiniboine and Gros Ventre Tribes, the Chippewa-Cree Tribes, the Northern Cheyenne Tribe, the Blackfoot Tribe, the Crow Tribe, the Turtle Mountain Chippewa Tribe, and the Eastern Shoshone and Northern Arapahoe Tribes.

The water rights of these tribes have either been quantified or settlement negotiations are on-going. As part of its trust responsibility, the BIA-RMRO is committed to the protection and assertion of the premise the Winters Doctrine represents which is the right of Indian tribes' to a quantity of water to make their reservations viable homelands. Present and future water requirements for uses such as domestic, irrigation, municipal, commercial, livestock, fish and wildlife, recreational and other uses cannot be overlooked or their importance diminished. These water requirements must be incorporated into the Corps' consideration of the impacts of alternatives on the operation of the Missouri River.

The protection and assertion of Indian reserved water rights is only one facet of the federal government's trust responsibility to Indian tribes. It is one that cannot be taken lightly and as such, the BIA-RMRO supports the position of all Indian tribes within the Missouri Basin in their efforts to contribute to the review process to ensure the choice of an alternative which will result in minimum impact on tribal reserved water rights.

The BIA-RMRO trusts the Corps will respond appropriately to concerns voiced by Indian tribes located within the Missouri Basin.

Sincerely,

A handwritten signature in black ink that reads "Keith Beartusk". The signature is written in a cursive style with a large, prominent initial "K".

Regional Director

cc: Executive Director, Mni Sose Intertribal Water Rights Coalition
Director, Bureau of Indian Affairs, Aberdeen Regional Office
Director, Bureau of Indian Affairs, Anadarko Regional Office
Administrator, U.S. Environmental Protection Agency, Region 7
Administrator, U.S. Environmental Protection Agency, Region 8

**THREE AFFILIATED TRIBES
OF THE FORT BERTHOLD RESERVATION**

October 8, 1999

To: General Carl A. Strock

Fax: 503-808-3706

TH From: Tex Hall, Chairman
Three Affiliated Tribes

Re: **MRBA Draft Recommendations of 8-31-99**

As you know, the Three Affiliated Tribes (TAT) are long-time residents of the Missouri River for much of its passage in North Dakota. We are hopeful of playing an active and positive role in Missouri River re-operations. The Tribes have four priorities:

- i. Preservation of historic properties and cultural resources
- ii. Recovery of native species
- iii. Restoration of Missouri River habitat, and
- iv. Expansion of Missouri River recreation and tourism

From our point of view these goals can best be achieved in North Dakota by our working cooperatively with interested parties and by having the COE develop a relationship with the Three Affiliated Tribes which is comparable to the relationship which would be established if the Department of the Interior rather than COE were the lead agency in Missouri River re-operation matters. The essentials of such a relationship are (i) a commitment by COE to protect TAT trust assets on and about the Missouri River, and (ii) the development of one or more contracts for services which will allow the TAT to step into the shoes of appropriate COE functions.

Gen. Strock Mm

A1-491

We have the following specific comments to the 8-31-99 recommendations.

1. P4. Recommendation #1. Recovery Committee

The Recovery Committee should retain appropriate technical staff – some USFWS employees and some consultants – to develop a flow regime necessary to recover native species while allowing other uses to continue.

2. PP 4-5. Recommendation #2. River Flows

The river re-operations must be undertaken throughout so as to protect Tribal historic and cultural resources and to protect Tribal Winters rights – the senior water rights on the Missouri River. _{water?}

3. P5. Recommendation #3. Habitat Acquisition and Enhancement

Funding for habitat restoration and recreation enhancement may come from ongoing COE authorizations or from special Missouri River improvement legislation such as introduced by Senator Kerrey in June, 1999. In either case, key sites in North Dakota, located within the boundaries of the Fort Berthold Indian Reservation, need to be provided with appropriate financial resources.

We set forth these views to assist the COE in moving forward to a successful Missouri River re-operation. The TAT priorities described in this memorandum should be undertaken side by side with the Tribal Recommendations which are set forth in the 8-31-99 correspondence.

We look forward to pursuing these matters with the COE and other interested parties at the meeting on October 18, 1999 in Denver.

cc: North Dakota State Engineer Dave Spryncynatyk
701-328-3696

Oglala Sioux Tribe
Statement of Concerns With Army Corps of Engineers
Missouri River Revised Draft Environmental Impact
Statement
and S.D. Mitigation Act
For Submittal to Corps of Engineers Northwestern Div.

Prepared for the Oglala Sioux Tribe Land Committee

By Peter Capossela, Attorney at Law

11-22-99

Summary

1. Introduction
2. Treaty Rights of Oglala Sioux Tribe
3. Socioeconomic Considerations - Pine Ridge Indian Reservation
4. Reserved Water Rights of Oglala Sioux Tribe
5. Scope of PRDEIS is too Narrow - Impacts of S.D. Mitigation Act
6. Failure to Fulfill Trust Responsibility / Too Much Deference to States
7. Compliance With Cultural Resources Protection Laws
8. Conclusion

Oglala Sioux Tribe
Concerns With Army Corps of Engineers
Missouri River Revised Draft Environmental Impact Statement
For Submittal to Department of the Army

1. Introduction

The Pick-Sloan program has not benefited the Oglala Sioux Tribe. Bureau of Reclamation diversions of water on the White River at Whitney, Nebraska and Angostura Dam on the Cheyenne River, diminish water flows on the Pine Ridge Indian Reservation. The Oglala Sioux Tribe is also concerned with Corps of Engineers operations on the Missouri River, to which the Tribe has extensive water rights.

The Corps of Engineers released the "Preliminary Revised Draft Environmental Impact Statement on the Missouri River Master Manual, in July, 1998. The Oglala Sioux Tribe hereby submits our concerns to the Corps of Engineers with the "PRDEIS. In the Final EIS, the Corps of Engineers should include the following -

1. The Treaty rights and history of the Oglala Sioux Tribe.

2. The Socioeconomic conditions of the Pine Ridge Indian Reservation must be accurately portrayed. The Corps should investigate ways that Pick-Sloan program benefits, such as hydropower, can be used to improve socioeconomic conditions on the Reservation.

3. The Reserved Water Rights of the Oglala Sioux Tribe must be accurately portrayed and protected.

4. The EIS must evaluate the impacts of the S.D. Mitigation Act on Corps lands along the Missouri River.

5. The Corps of Engineers must fulfill its trust responsibility to the Tribes, and stop submitting to the water allocation plans of the states and Missouri River Basin Association.

6. The Corps must fully comply with the Native American Graves Protection and Repatriation Act (NAGPRA), the National Historic Preservation Act and other federal cultural resources protection laws.

2. Treaty Rights of Oglala Sioux Tribe

The Oglala Sioux Tribe has extensive Treaty claims in the Missouri River basin. The Oglala Sioux Tribe is a signatory Tribe of the Treaty of Fort Laramie of 1851 (11 Stat. 749), and the Treaty of Fort Laramie of April 29, 1868 (15 Stat. 735).

The 1851 Fort Laramie Treaty had established as Sioux Country the entire upper great plains region. Article 5 of the 1851 Treaty delineated as Sioux Country a vast region bordered by the Platte River on the south, Big Horn Mountains on the west, Yellowstone River on the northwest, and Missouri River to the north and east.

For the Oglala Sioux Nation, the Powder River country in present-day eastern Wyoming, which was very productive buffalo hunting ground, and the Black Hills of present-day South Dakota, were perhaps the most important areas. The hunting grounds were settled in the summer, with buffalo runs during the late summer which provided the subsistence and economic base of the nation. The Black Hills was the spiritual center for the Sioux.

But gold was discovered in the northern Rocky Mountains in 1864. This led to the construction of the Bozeman Trail, right through the Powder River valley hunting grounds. The great Sioux War Chief Red Cloud told the invading cavalry in 1865 - " I have two mountains in that country - the Black Hills and the Big Horn Mountains. I want the white man to make no roads through them."

The U.S. Cavalry had entered the Powder River valley in the spring of 1865, under the pretext of looking for Indians who took part in raids against the road and railroad builders. A series of skirmishes led to the formation of a Treaty commission. There were negotiations at Fort Laramie in June, 1866.

Red Cloud and Man Afraid of His Horses led the Oglala Sioux band in these discussions. They were told that the United States was prepared to build a road right through eastern Wyoming - right through the heart of the buffalo hunting grounds. This was a clear violation of the 1851 Treaty. Red Cloud responded that "Great Father sends us presents and wants new road. But White Chief goes with soldiers to steal road before Indians say yes or no! For my part, I prefer to die fighting than by starvation." The negotiations broke down.

The cavalry established the Bozeman Trail, right through the Powder River Treaty lands. A garrison was established at Fort Reno, in violation of the 1851 Treaty. Red Cloud organized raids, with Crazy Horse. On December 21, 1866,

forces under Red Cloud and Crazy Horse overwhelmed the U.S. forces, in the Battle of the Hundred Slain. (Fetterman's Battle). It was the first time an American military outfit was completely decimated, since the Revolutionary War nearly 100 years earlier.

The United States dispatched a new commission to Fort Laramie, for a treaty to secure the Bozeman Trail. Oglala chiefs Little Wound and Man Afraid of His Horses met with the Commissioners in 1867. The construction of the railroad continued, in violation of the 1851 Treaty.

The United States negotiated what it could not take by force. A new Treaty was entered.

The Treaty of Fort Laramie of April 29, 1868, resulted in the establishment of the Great Sioux Reservation. The Reservation includes all of present-day South Dakota west of the Missouri River. The Missouri's east bank is the Great Sioux Reservation's eastern boundary. The Sioux negotiators specifically ensured that the Missouri River was included as part of the Reservation. The hunting grounds of the Powder River valley were recognized as unceded Indian land, with hunting rights for the Sioux.

The government got its road, but the Lakota Nation retained a vast Reservation from the Black Hills to the Missouri River. We retained our hunting rights on the Powder River hunting grounds.

The United States had eagerly entered the 1868 Fort Laramie Treaty - they were the party which pushed for it. The U.S. government itself wanted to denominate the Missouri River and its adjoining land as Sioux land - in order to free up other territory for road building.

Article 2 of the 1868 Treaty describes the boundaries of the Great Sioux Reservation. Article 2 reads as follows -

The United States agrees that the following district of country, to wit, viz: commencing on the east bank of the Missouri River, where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of the State of Nebraska strikes the river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of beginning; and in addition thereto, all existing reservations

of said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the (Sioux Nation)...

15 Stat. 635.

In Article 2, the United States "solemnly agree(d)" that no unauthorized persons "shall ever be permitted to pass over, settle upon, or reside in (this) territory." (*Id.*) Further, Article 12 of the Treaty provides that -

No treaty for the cession of any portion or any part of the reservation herein described which may be held in common shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians, occupying or interested in the same.

15 Stat. at 638.

The Sioux Nation has a reserved treaty right to hunt, fish and use the waters of the Missouri. These rights are very, very important. They have not been extinguished, on account of the rejection by the Oglala Sioux Tribe and Great Sioux Nation of the Supreme Court judgment award in United States v. Sioux Nation. 448 U.S. 371 (1980).

Nevertheless, the United States violated the 1868 Fort Laramie Treaty soon after its ratification. The discovery of gold in the Black Hills led to further incursions by the cavalry, treaty violations, and war, which culminated in the defeat of Custer at Little Big Horn. Reinforcements by the United States led to the scattering of the bands, and ultimately Red Cloud settled at Pine Ridge Agency. Crazy Horse was assassinated in 1877. The Oglala Sioux band and the Great Sioux Nation were the last native people in North America to submit to the Reservation lifestyle, and to the authority of the United States.

Later, Congress carved apart the Great Sioux Reservation, to obtain the Black Hills and much of the plains for homesteading, through a series of Homestead Acts in the late 1800's. The Act of February 28, 1877 deleted the valuable Black Hills from the Reservation, so it could be opened to gold mining. (19 Stat. 254). Congress carved out six smaller Reservations from the Great Sioux Reservation, in the Act of March 2, 1889 (25 Stat. 888)

The U.S. Supreme Court referred to the conduct of the United States in passing these acts and violating the treaties with the Sioux as "unfair and dishonorable dealings." United States v. Sioux Nation, 448 U.S. at ____.

The Court awarded the Sioux Nation \$108 million to extinguish the Treaty claim under the Indian Claims Commission Act of 1946, but the Great Sioux Nation rejected the judgment award. The Sioux Nation still claims title to the land and water included in the boundaries described in Article 2 of the 1868 Treaty.

However, the courts refuse to transfer title to these lands back to the Sioux Nation, asserting that only Congress may do so. Oglala Sioux Tribe v. United States, 650 F.2d 140 (8th Cir. 1981). There have been proposals in Congress to re-establish the boundaries of the Great Sioux Reservation and transfer the federal lands within those boundaries to the Great Sioux Nation. See e.g. 99th Cong., 1st Sess., S. 705. The Treaty claim remains unresolved.

This is important history, which the Corps of Engineers must acknowledge, respect and include in its Master Manual Review process.

3. Socioeconomic Considerations - Pine Ridge Indian Reservation

The NEPA regulations require the Corps of Engineers to evaluate the socioeconomic conditions that are impacted by its Pick-Sloan program. This includes the socioeconomic conditions of the Pine Ridge Indian Reservation. These conditions are dramatic.

The annihilation of the buffalo and the sedentary Reservation lifestyle have been difficult for the Oglala Sioux. Federal government promises of economic support has not materialized. Instead, the Sioux land base, the one economic resource that survived the onslaught of the westward immigration of whites in the 1860's, has been eroded through the "dishonorable dealings." United States v. Sioux Nation, *supra*. The Sioux land base has shrunk from 80 million acres in 1868 to 5.3 million acres after 1906. The virtual confiscation of this land by the United States has left the Oglala Sioux Tribe in a rural location, isolated from the mainstream economy and with a small percentage of its original landholdings intact. Devastating poverty has resulted.

The Oglala Sioux Tribe suffers the highest infant mortality rates in the nation. (1990 U.S. Census). The life expectancy on our Reservation is the lowest in the nation. (1990 U.S. Census). Unemployment and poverty rates are staggering. The federal government schools and roads remain under-funded and dilapidated. There is a severe housing shortage on our Reservation, which impacts both the families

living there and deters the recruitment of Public Health Service and other professionals, whose services are badly needed. Public water supplies are inadequate, and the environmental infrastructure is failing, causing public health threats.

The unemployment rates are extreme. The Oglala Sioux Tribe estimates unemployment and underemployment to be 85 percent on our Reservation. The median family income on the Pine Ridge Indian Reservation is \$10,870, one-third the national average. (1990 U.S. Census). Per capita income on the Reservation is \$3,417, less than one fourth of the national average. (1990 U.S. Census).

The Pine Ridge Indian Reservation remains the poorest place in the United States. (1990 U.S. Census).

An astonishing 15 percent of our households on the Pine Ridge Reservation lack basic plumbing, as opposed to one-tenth of one percent nationwide. (U.S. Department of Housing and Urban Development, 1996) The Department of Housing and Urban Development has declared a federal Housing Emergency, rendering the Reservation eligible for Emergency Housing Assistance.

In South Dakota, sixty-three percent of the families receiving welfare assistance are Native American, although American Indians comprise only 15 percent of the overall state population. Indian families comprise forty-two percent of the state's food stamps case load.

The requirements imposed on families receiving welfare under the Personal Responsibility Act of 1996 exacerbate the difficulties facing the Tribes, in addressing the needs of these families. The Oglala Tribe estimates that 10,000 jobs must be created on the Reservation within four years, to offset the income lost for families on public assistance due to the 1996 welfare reform legislation.

Residents on the Pine Ridge Indian Reservation have the lowest chance of any American to reach the age of sixty. (1990 U.S. Census). The life expectancy amongst males living on these Reservation is 47 years, as compared to the national average of 72 years. (1990 U.S. Census). An Indian living on the Reservation has a 15 percent chance of suffering an accidental death, as opposed to a 2 percent chance for Americans generally. (1990 U.S. Census).

Health statistics similarly paint a serious picture. Nationwide, tuberculosis affects Native Americans 400 percent more frequently than non-Indians. The Indian mortality rate for diabetes exceeds the national average by 140 percent. Indians are also four times more likely to die from

alcoholism than other Americans. Fetal Alcohol Syndrome is particularly problematic, with rates among Native Americans six times the national average. (U.S. Senate Committee on Indian Affairs, 1998). By all measures, the health status of the Oglala Sioux lags significantly behind every other group of Americans.

There is a tremendous toll on family life. Over fifty percent of the families on the Pine Ridge Reservation live below the poverty level. (1990 U.S. Census). The national average of families in poverty is ten percent. (1990 U.S. Census).

These conditions are particularly difficult for children and the elderly. Seventy percent of the children on the Pine Ridge Indian Reservation live in poverty. (1990 U.S. Census). Nearly 60 percent of the elderly live below the poverty level, although only 2 percent of the elderly are subject to these conditions, nationwide. (1990 U.S. Census).

The physical infrastructure needs of the Reservations are immense. The roads connecting the various Tribal communities generally remain unpaved, and during the winter months entire communities remain isolated due to poor road conditions and inadequate maintenance. The Bureau of Indian Affairs estimates road construction needs on the Pine Ridge Indian Reservation at \$62 million.

Earlier this century, the government forcibly acquired 342,000 acres of Tribal land, which it used as a bombing range. Live, unexploded ordinance remains on this land, which the Tribe is now removing, in cooperation with the Corps of Engineers.

There are severe and immediate public health needs in the area of environmental infrastructure. Water supplies and waste water infrastructure remain terribly inadequate. The roads and municipal facilities are under-developed, poorly maintained and in many instances failing. Raw sewage threatens public health, and inadequate roads contribute to the highest levels of accidental deaths in the United States. The solid waste management system is seriously under-funded, and the open dumping of garbage is a serious concern.

Extreme levels of poverty facing the Oglala Sioux Tribe remain unmatched anywhere else in the United States.

Yet there is no recognition by the Corps of Engineers of the dire socioeconomic statistics on the Reservation. They are omitted from the computer model and the proposed narrative analysis. It is as if the Indians at Pine Ridge do not exist, although the water managed by the Corps of Engineers is subject to our claim under the *Winters Doctrine*.

Accurate statistical data on the socioeconomic of the Pine Ridge Indian Reservation, as described above, must be included in the Environmental Impact Statement.

In the meantime, economic and trust resources of the Tribe are utilized to produce the National Economic Development (NED) benefits described in the PRDEIS. These benefits total nearly \$1.8 billion annually. The Tribe receives none of these benefits.

The Master Manual Review and Update should document this, and establish a basis for congressional action to allocate some of the NED benefits of the Pick-Sloan program to the Oglala Sioux Tribe.

4. Reserved Water Rights of the Oglala Sioux Tribe

The Oglala Sioux Tribe claims substantial water rights to the Missouri River, its tributaries and the basin's groundwater. The Congress acknowledged the Tribe's water rights to the Missouri's main stem in the Mni Wiconi Project Act of 1988 (102 Stat. 2568). This act authorized the construction of an extensive rural water system, serving three Reservations and a non-Indian water district. The act provides that the Mni Wiconi system is owned and operated by the Oglala Sioux Tribe. Its source is the Missouri River, with the intake located near Fort Pierre, South Dakota.

The Oglala Sioux Tribe similarly claims substantial irrigation water from the Missouri River, under the *Winters* Doctrine. Indian irrigation water rights were firmly established in Arizona v. California. 373 U.S. 546 (1963). The Court held that "when the United States created these reservations, or added to them, it reserved not only land but also the use of enough water from the Colorado to irrigate the irritable portions of the reserved lands." 373 U.S. at 596 (1963).

It is widely accepted that Indian reserved water rights under the *Winters* Doctrine include a right to water for all beneficial uses that are necessary to make our Reservation a "permanent homeland." F. Cohen, Handbook of Federal Indian Law (1982 ed.), p. 588. The Oglala Sioux Tribe claims rights to the water of the Missouri River for all beneficial uses, including domestic, agricultural, grazing, fish and wildlife, cultural and ceremonial, recreation, and other uses.

The water rights of the Tribe are derived from principles established by the U.S. Supreme Court in Winters v. United States, 207 U.S. 564 (1907). The Court held that

"The power of the Government to reserve the waters (for the Indian Tribe) and exempt them from appropriation under the state laws is not denied and could not be..... the Government did reserve them.... and for a use which would be necessarily extended through the years." 207 U.S. at 576.

These principles apply to the Missouri River. The Oglala Tribe possesses water rights to the Missouri River under the 1868 Fort Laramie Treaty and the *Winters Doctrine*.

Our water rights are "prior and superior" to the rights of non-Indians, obtained under state law. F. Cohen, p. 578. This is because Indian water rights are derived from Treaties and federal law, while the water rights of non-Indians are derived from state law. (*Winters v. United States*). During times of water shortage, non-Indian uses must be curtailed. (*United States v. Ahtanum Irrigation District*, 236 F.2d 321 (9th Cir. 1956))

The Corps of Engineers fails to incorporate these principles in its planning documents. The PRDEIS describes the impacts of different water management schemes for the Missouri River, without accounting for the claims of the Oglala Sioux Tribe to the water.

Instead, the PRDEIS misstates the import of Indian reserved water rights. In the PRDEIS, the Corps states-

Certain Missouri River basin Indian Tribes are entitled to water rights in streams running through and along their reservations under the Winters Doctrine.... The basin Indian Tribes are in various stages of quantifying their rights. Currently, tribal reservation reserved water rights have not been quantified in an appropriate legal forum or compact except in four instances...

The Study considered only existing consumptive uses and depletions.

COE, PRDEIS, 3-74.

This language is very weak and inaccurate.

The water rights of the Tribes under the *Winters Doctrine* are vested, perfected rights. *Arizona v. California*. The Oglala Sioux Tribe has not quantified our *Winters Doctrine* water rights. We oppose the quantification of our reserved water rights, because the federal courts have deferred to state courts in water adjudications.

However, the Oglala Sioux Tribe owns our water regardless of whether our rights have been quantified.

Indian reserved water rights are vested, regardless of whether they have been quantified. In the PRDEIS, the Corps of Engineers mis-states the existence of our rights, and ignores the impact that our rights, when exercised, shall have on existing uses. The Corps suggests that there is some vagueness underlying Indian reserved water rights. The Corps over-states the import of quantification of Indian water rights, and falsely suggests that Indian reserved water rights need not be recognized if they are not quantified.

Indian water rights in the Missouri River are extensive and will dramatically impact water resource allocation in the Missouri in the 21st century. This must be clearly acknowledged in the EIS.

5. Scope of PRDEIS is Too Limited -
Consideration of S.D. Mitigation Act

The scope of the PRDEIS is too limited. The Corps of Engineers attempts to separate out the water allocation issues from the land management issues along the Missouri River. The National Environmental Policy Act regulations require that the agency considers "the direct and indirect impacts" of the proposed action. 40 CFR §1502. This includes an assessment of "possible conflicts between the proposed action and the objectives of land use plans (and) policies." Id. at (f).

The Corps must also evaluate how the statutory mandates contained in Title VI impact Missouri River operations. For example, some of the Fish and Wildlife Alternatives in the PRDEIS would reduce water levels well below the elevation where land is to be transferred to South Dakota. Moreover, the Corps' responsibilities for the protection of cultural resources impacted by the Pick-Sloan program are brought into question by Title VI. These are Pick-Sloan program issues that cannot be ignored in the Master Manual Environmental Impact Statement.

The Oglala Sioux Tribe opposes the transfer of Corps of Engineers lands to the state of South Dakota. Much of the land to be transferred to the state of South Dakota is within the boundaries of the Great Sioux Reservation, as defined in Article 2 of the 1868 Fort Laramie Treaty. The transfer of this land to the state shall threaten the Native American cultural resources embedded in the banks of the Missouri River. The land transfer undermines the federal role in Missouri River operations, making it easier for South Dakota to impede the exercise of Indian water rights. The state seeks to develop these lands, potentially affecting water quality and valuable waterfowl habitat.

The land on the west bank of the Missouri is within the boundaries of the Great Sioux Reservation, as defined in Article 2 of the 1868 Fort Laramie Treaty. Although much of this land was confiscated in 1889, the Sioux Nation rejected the cash payment that was adjudicated in United States v. Sioux Nation. The land takings were characterized in that litigation as "dishonorable dealings." The land takings have been thoroughly discredited by historians, and by the courts. Numerous bills have been introduced by Congress during the last 15 years to re-establish the boundaries of our Treaty Reservation, which would include these lands.

The Corps must document this in the final Environmental Impact Statement. The Mitigation Act shall have a dramatic impact on land and water at the Corps' Missouri River projects. The Environmental Impact Statement cannot ignore the Mitigation Act's affects on the federal land included in the Pick-Sloan program. The Corps should not transfer any land to the state that are within the boundaries of the Great Sioux Reservation, as defined in Article 2 of the 1868 Fort Laramie Treaty.

6. Failure to Fulfill Trust Responsibility /
Too Much Deference to States

In its Missouri River operations and in the Master Manual Review and Update process, the Corps of Engineers has failed to fulfill its trust responsibility to the Tribes, and has given too much deference to the states.

The Department of Defense itself acknowledges its Trust Responsibility in the Department of Defense American Indian and Alaska Native Policy. (October 1998, See also Executive Order 13084, Presidential Memorandum on Government-to-Government Relations with Indian Tribal Governments (April 29, 1994)) . The DOD Indian Policy states -

* "(Tribal) concerns should be addressed prior to reaching decisions on matters that may have the potential to significantly affect protected tribal resources, tribal rights or Indian lands."

* "Recognize and respect the significance tribes ascribe to certain natural resources and properties of traditional or customary religious or cultural importance by.... Undertaking DoD actions and managing DoD lands consistent with the conservation of protected tribal resources and in recognition of tribal treaty rights... "

The Corps of Engineers violates these principles in Missouri River operations and in the PRDEIS. The Oglala

Sioux Tribe calls upon the Corps of Engineers to comply with the Trust Responsibility and the DoD Indian Policy.

Instead, the Corps completely defers to the states. The Corps of Engineers regularly consults with the states. The Corps consults much more with the states than it does with the Tribes.

The Corps defers too much to the states on the water storage and allocation plans the states are negotiating through the Missouri River Basin Association. The States' Association acts against the best interests of the Oglala Sioux Tribe. Yet the Corps works closely with the states as they negotiate plans for management of the Missouri River.

The Corps of Engineers manages the Missouri River at present in ways that benefit the regional economy, through hydropower generation, flood control, navigation and recreation development, without providing any of the NED benefits to the Tribes. The states receive these benefits, not the Tribes.

The Corps consults more closely with the state than with the Tribes, although there is a trust responsibility to the Tribes and the Tribes possess water rights to the Missouri River, which the state do not.

The manner in which projects such as the Pick-Sloan program are operated, in violation of the trust responsibility, has been described as follows -

Application of a duty of loyalty to administrative officials in their dealings with Indians is of particular importance because conflicts of interest between Indian claims to natural resources and the programs and policies of agencies not directly responsible for Indian affairs frequently impede the faithful discharge of trust obligations to Indians by federal officials. Indian tribes have claims... to water which is coveted for non-Indian water, power, and flood control projects developed by the Bureau of Reclamation or Army Corps of Engineers..... Non-Indians, of course, are more numerous and usually politically more powerful, so substantial political pressure can frequently be applied on executive officials to compromise or ignore Indian rights.

F. Cohen, p. 227-228.

This is what is happening in the Missouri River Basin.

The Corps of Engineers should cite this Felix Cohen treatise, in the Environmental Impact Statement. The Corps should acknowledge that the benefits of the Pick-Sloan program have not historically been enjoyed by the Oglala Sioux Tribe, and that these benefits should be re-allocated in favor of the Tribe.

7. Compliance With Cultural Resources Protection Laws

The National Historic Preservation Act requires that "all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency." 16 U.S.C. §470h-2(a)(1). The agency shall ensure that cultural resources "are managed and maintained in a way that considers the preservation of their historic, archaeological... and cultural values...: " §470h-2(a)(2). Before any undertakings - such as release of water from a dam - the agency must "take into account the effect of the undertaking" on cultural resources. 16 U.S.C. §470f.

The Native American Graves Protection and Repatriation Act (NAGPRA) also applies. 25 U.S.C. §3001 et seq. Under NAGPRA, the Oglalas own human remains and funerary objects that are located on Corps land outside of the boundaries of present-day Indian Reservations, but which can be identified as Oglala Sioux. 25 U.S.C. §3002(a)(2). Once an inadvertent discovery takes place, no additional damage may be done, and the objects must be immediately transferred to the custody of the Tribe, which is empowered to perform repatriation. 25 U.S.C. §3002(a). The Tribe is particularly concerned with cultural resources located along the Missouri River at the site of the Wetstone Agency, along the Missouri River.

The Corps routinely violates the requirements of these statutes, in operating the Missouri River dams. Wave action and water level fluctuations that result from COE operations are "federal undertakings" under the National Historic Preservation Act. The Act requires the Corps to account for the damage to these resources prior to the undertaking - the Corps fails to properly consider and mitigate the adverse impacts. The PRDEIS likewise fails to comply with these requirements.

8. Conclusion

The Corps of Engineers has released a Preliminary Revised Draft EIS on the Missouri River Master Manual. In the Final EIS, the Treaty rights of the Oglala Sioux Tribe must be documented. The current socioeconomic conditions of the Reservation should be accurately portrayed. The Corps should acknowledge that the benefits of the Pick-Sloan

program have not historically been enjoyed by the Oglala Sioux Tribe, and that these benefits should be re-allocated in favor of the Tribe.

The Corps must look very closely at how the S.D. Mitigation Act impacts Missouri River operations. The Oglala Sioux Tribe opposes the transfer of Corps lands to the state of South Dakota. The Corps should not transfer any land to the state that are within the boundaries of the Great Sioux Reservation, as defined in Article 2 of the 1868 Fort Laramie Treaty.

The Corps has violated its Trust Responsibility to the Tribes, and has given too much deference to the states. The MRBA does not represent the Oglala Sioux Tribe. Mni Sose's participation in MRBA should not be interpreted as concurrence by the Missouri River Basin Tribes with the MRBA's recommendations.

The submittal of this report should not be construed as a waiver by the Oglala Sioux Tribe of any claims against the United States, or additional comments or arguments to the Corps of Engineers for the Final Environmental Impact Statement on the Missouri River.

Tribal Correspondence 2000



Executive Director:
Richard Bad Moccasin

Member Tribes:
Aminibohine & Sioux Tribes of Fort
Peck, Poplar, Montana

Blackfoot Tribe
Browning, Montana

Cheyenne River Sioux Tribe
Eagle Butte, South Dakota

Chippewa Cree Tribe
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe
Fort Thompson, South Dakota

Eastern Shoshone Tribe
Fort Washakie, Wyoming

Flandreau Santee Sioux Tribe
Flandreau, South Dakota

Fort Belknap Tribes
Harlem, Montana

Kichapoo Tribe in Kansas
Horton, Kansas

Lower Brule Sioux Tribe
Lower Brule, South Dakota

Northern Arapaho Tribe
Fort Washakie, Wyoming

Northern Cheyenne Tribe
Lame Deer, Montana

Ogala Sioux Tribe
Pine Ridge, South Dakota

Omaha Tribe
Macy, Nebraska

Ponca Tribe of Nebraska
Niobrara, Nebraska

Prairie Band of Potawatomi
Moyetta, Kansas

Rosebud Sioux Tribe
Rosebud, South Dakota

Sec & Fox Nation of Missouri
Reserve, Kansas

Santee Sioux Tribe
Niobrara, Nebraska

Sisseton-Wahpeton Sioux Tribe
Agency Village, South Dakota

Spirit Lake Tribe
Fort Totten, North Dakota

Standing Rock Sioux Tribe
Fort Yates, North Dakota

Three Affiliated Tribes
New Town, North Dakota

Turtle Mt. Band of Chippewa
Belcourt, North Dakota

Winnemago Tribe of Nebraska
Winnemago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

April 3, 2000

Rosemary C. Hargrave, M.S.
Missouri River Master Manual Project Manager
US Army Corps of Engineers
USAED-Northwestern
CENWD-MR-ET-R
12565 West Center Road
Omaha, NE 68144-3869

Dear Ms. Hargrave:

On behalf of the Board of Directors of the Mni Sose Intertribal Water Rights Coalition, I invite you to make a presentation at the Mni Sose Intertribal Water Rights Coalition's May 18 and 19, 2000, Board of Directors' meeting. The Board meeting will be held at the Golden Buffalo Casino in Lower Brule, South Dakota.

I request that you provide the tribal leaders with an update on the Revised DEIS process for the Master Manual study.

I will call you in the near future to confirm your participation. Should you have questions in the meantime, please call me at 1-800-243-9133.

Thank you for considering my invitation.

Sincerely,

Richard Bad Moccasin
Richard Bad Moccasin
Executive Director

A1-513

Telephone (605) 343-6054...Fax (605) 343-4722...E-mail mnisose@rapidcity.com...Internet www.mnisose.org

Executive Director:
Richard Bad Moccasin

Member Tribes:
Arapaho & Sioux Tribes of Fort
Peck, Poplar, Montana

Blackfeet Tribe
Browning, Montana

Cheyenne River Sioux Tribe
Eagle Butte, South Dakota

Chippewa Cree Tribe
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe
Fort Thompson, South Dakota

Eastern Shoshone Tribe
Fort Washakie, Wyoming

Flandreau Santee Sioux Tribe
Flandreau, South Dakota

Fort Belknap Tribes
Harlem, Montana

Kickapoo Tribe in Kansas
Horton, Kansas

Lower Brule Sioux Tribe
Lower Brule, South Dakota

Northern Arapaho Tribe
Fort Washakie, Wyoming

Northern Cheyenne Tribe
Lame Deer, Montana

Oglala Sioux Tribe
Pine Ridge, South Dakota

Omaha Tribe
Macy, Nebraska

Ponca Tribe of Nebraska
Niobrara, Nebraska

Prairie Band of Potawatomi
Moyetta, Kansas

Rosebud Sioux Tribe
Rosebud, South Dakota

Sac & Fox Nation of Missouri
Reserve, Kansas

Santee Sioux Tribe
Niobrara, Nebraska

Siouxton-Wahpeton Sioux Tribe
Agency Village, South Dakota

Spirit Lake Tribe
Fort Totten, North Dakota

Standing Rock Sioux Tribe
Fort Yates, North Dakota

Three Affiliated Tribes
New Town, North Dakota

Turtle Mt. Band of Chippewa
Belcourt, North Dakota

Tinnebago Tribe of Nebraska
Tinnebago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

April 12, 2000

Rosemary C. Hargrave, M.S.
Missouri River Master Manual Project Manager
US Army Corps of Engineers
USAED-Northwestern
CENWD-MR-ET-R
12565 West Center Road
Omaha, NE 68144-3869

Dear Ms. Hargrave:

I am pleased you will be able to participate in the Mni Sose Intertribal Water Rights Coalition's May 18 and 19, 2000. Board of Directors' meeting. Attached is a draft meeting agenda.

The Board meeting will take place at:
The Golden Buffalo Casino
321 Sitting Bull Casino
Lower Brule, SD 57548

Lodging is available at:
Golden Buffalo Resort Motel
120 Crazy Horse Street
Lower Brule, SD 57548

Reservations: The casino handles reservations for the motel. For reservations, call the casino at (605) 473-5577 and mention the Mni Sose block. The casino and motel are located adjacent to each other. To check in the motel, go to the casino door located nearest the motel.

Driving directions from Interstate 90: Take Exit 248 and travel north on State Highway 47 for approximately 18 miles. A sign for the Golden Buffalo Casino will be at the junction of Highway 47 and the local road. Turn west onto the local road (dirt road) and drive for approximately 6 miles. The casino will be located at the end of the road. A number of signs will also direct you to the casino.

Please forward a copy of material you would like included in the Board packets to Dawnette Owens, Mni Sose Projects Assistant, at your earliest convenience. Also let her know if you need audio/visual equipment for your presentation.

We look forward to your presentation at the Mni Sose Coalition's Board meeting.

Sincerely,


Richard Bad Moccasin, M.P.H.
Executive Director

enc.

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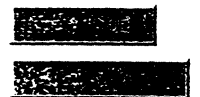
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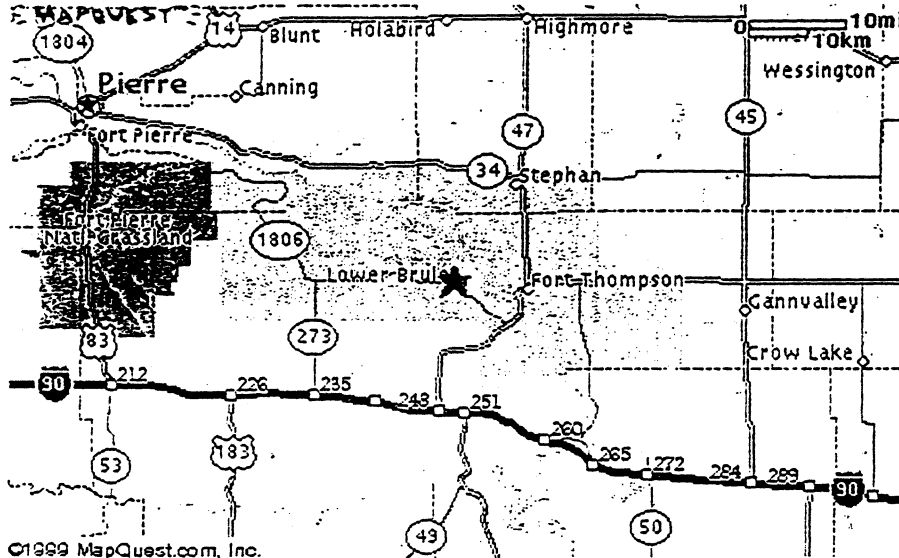
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**MNI SOSE INTERTRIBAL WATER RIGHTS COALITION
MEETING OF THE BOARD OF DIRECTORS**

**Lower Brule, SD
May 18 and 19, 2000
DRAFT Agenda**

May 18, 2000

- 7:30 am **Registration**
- 8:30 **Opening Prayer - Tribal Elder**
Roll Call – Gladys Renville, Secretary
Call to Order – Gary Collins, President
Welcome and Introductions - Richard Bad Moccasin, Executive Director
Approval of Minutes – Gladys Renville, Secretary
Finance Report – Rhonda Azure, Treasurer
Executive Director's Progress Report - Richard Bad Moccasin
Resolution Requests
- 12:00 noon **Lunch (on your own)**
- 1:15 pm **Bureau of Reclamation Activities Review—Ronald Eggers, Special Assistant for Native
American Affairs/Great Plains Region of the Bureau of Reclamation**
Question and Answer Session
- 2:00 **Review of Bureau of Indian Affairs' Activities—Jeff Loman and Terry Virden,
Bureau of Indian Affairs***
Question and Answer Session
- 2:45 **Break**
- 3:00 **Implementing the Billings Marketing Area WAPA Contracts—Jon Horst, Public
Utilities Specialist and Don Ami, Liaison/Western Area Power Administration**
Question and Answer Session
- 3:45 **Update of the Revised DEIS Process for the Master Manual—Rosemary
Hargrave, M.S., Master Manual Project Manual/Army Corps of Engineers**
Question and Answer Session
- 4:15 **Recess**

May 19, 2000

- 8:00 am **Invocation**
- 8:15 **Bureau of Reclamation Drought Program—*Roseann Gonzales*, Policy Analyst/
Drought Coordinator, Bureau of Reclamation
Question and Answer Session**
- 9:00 **Core Water Quality Standards—*Leigh Price*, Environmental Protection Agency,
Region 8*
Question and Answer Session**
- 9:45 **Break**
- 10:00 **Crow Tribe's State Water Compact—*Steve Stevens*, Commissioner of Utilities and
Art Alden, Jr., Director of Water Resource Office, Crow Tribe
Question and Answer Session**
- 10:45 **Resolutions for Approval – *Gladys Renville*, Secretary**
- 12:00 noon **Adjourn**

*Invited

**CROW CREEK SIOUX TRIBE
FORT PECK TRIBE
LOWER BRULE SIOUX TRIBE
OMAHA TRIBE
PONCA TRIBE OF NEBRASKA
SANTEE SIOUX TRIBE
STANDING ROCK SIOUX TRIBE
THREE AFFILIATED TRIBES
TURTLE MOUNTAIN BAND OF CHIPPEWA
WINNEBAGO TRIBE
YANKTON SIOUX TRIBE**

May 8, 2000

To: United States Fish and Wildlife Service (FWS)
United States Army Corps of Engineers (ACOE)

From: Above named Missouri River Tribes

Re: Participation in April 1, 2000 Endangered Species Act (ESA) consultation on Missouri River

At the invitation of the FWS and the ACOE, we offer the following initial comments on behalf of the above named Missouri River Tribes:

1. We request that we be affirmatively be involved in all ESA consultations pursuant to Secretary of Interior Secretarial Order 3206.
2. We would like to be immediately provided with the scientific data upon which the proposed flows at Fort Peck and Gavins Point are founded.
3. We would like to be provided immediately with the specific data upon which FWS and ACOE intend to address impacts from the proposed flows.
4. We believe that part of a "reasonable and prudent alternative" (RPA) developed under this consultation should include the development of a recovery plan and that the Tribes should play an active role assuring that best available science is utilized in the recovery of endangered species. To that end we have been in discussion with Ron Blissner, a re-operation engineer well-known and frequently utilized by the Bureau of Indian Affairs and the Bureau of Reclamation (BOR) for these matters, on our need to participate in this process.
5. The Tribes believe they have important Indian trust assets and Environmental Justice rights which must, under Department of the Interior and ACOE rules, be addressed, mitigated, and where mitigation is not possible, compensation

**Letter to FWS and ACOE
Re: Missouri River Tribes concerns about Endangered Species Act
May 8, 2000
Page 2 of 4**

provided. Under the Endangered Species Act, the Federal agencies must utilize best available science to assist in the recovery and restoration of endangered fish. Pursuant to Federal ESA policies, the federal agencies are obligated to consult with and work to protect Tribal assets, see, e.g., Secretary of Interior Orders Nos. 3175-3206.

Among these duties are the protection of Indian Trust Assets. Below is an Indian Trust Asset (ITA) version adopted by the BOR. It sets forth clearly a general duty applicable to all Federal agencies.

Reclamation will carry out its activities in a manner that protects trust assets and avoids adverse impacts when possible. When Reclamation cannot avoid adverse impacts, it will provide appropriate mitigation or compensation.

Reclamation will ensure that Indian Tribes have the opportunity to learn about, participate fully in, and receive the benefits of the Reclamation program.

The U.S. Army Corps of Engineers articulation of this policy is as follows:

The U.S. Army Corps of Engineers recognizes that Tribal Governments are sovereign entities, with rights to set their own priorities, develop and manage Tribal and Trust resources, and be involved in Federal decisions or activities which have the potential to affect these rights.

The U.S. Army Corps of Engineers will work to meet Trust obligations, protect Trust resources, and obtain Tribal review of Trust and Treaty responsibilities or actions related to the Corps, in accordance to with provisions of Treaties, laws and executive orders, as well as principles lodged in the Constitution of the United States.

The U.S. Army Corps of Engineers will ensure that Tribal Chairs/Leaders meet with Corps Commanders/Leaders and recognize that, as Governments, Tribes have the right to be treated with appropriate respect and dignity, in accordance with principles of self-determination. (U.S. Army Corps of Engineers Tribal Policy Principles, See, also, 2-18-98 ACOE Memorandum on ITAs).

Letter to USFWS and ACOE

Re: Missouri River Tribes concerns about Endangered Species Act

May 8, 2000

Page 3 of 4

All Federal agencies are required to implement the Executive Order of February 11, 1994, setting forth principles of Environmental Justice, which states in pertinent part as follows:

Each Federal agency shall make achieving Environmental Justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies and activities on minority populations and low income populations in the United States.

Aside from these specific Federal agency guidelines, the courts have acknowledged the requirement of Federal agencies to "concurrently" administer Federal programs and their duty to protect Tribal ITAs. *United States v. Nevada*, ___ U.S. ___ (1983). When such concurrent responsibilities emerge, the Federal government must:

Resolve conflicting claims in a precise manner that indicates the weight given to each interest before it. Possible difficulties cannot be simply blunted by a "judgment call" calculated to placate temporarily conflicting claims. *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 F.Supp. 252, 256-257 (D.C.D.C. 1972)

6. Among the most important Indian Trust Assets which must always be honored is the Federal statutory right of the Tribes working with their non-Indian neighbors to divert water off the Missouri River for municipal purposes so long as other project purposes are not adversely affected. See, *ETSI Pipeline vs. Missouri*, 484 U.S. 495, 506 (1988). At the present time several of the Tribes are strongly supporting S. 623 - a long awaited proposal to provide significant Federal dollars and very small MR&I depletions off the Missouri River to allow poor Tribal and non-Tribal residents of North Dakota to secure high quality reliable surface water supplies. Documentation supplied by the State of Missouri and the State of North Dakota confirms that the maximum depletions authorized by S. 623 cannot be measured when the mighty Missouri River flows through Ilerman, Missouri at a rate of 95,000,000 acre feet of water per year. Other ITA's will be identified by the Tribes as we participate in the recovery of endangered fish.
7. USFWS and ACOE are required under Indian trust asset and Environmental Justice rules to concurrently implement Section 6 of the ESA by affirmatively stating in the consultation that S. 623 depletions do not adversely affect endangered species and lower basin navigation.

Letter to USFWS and ACOE

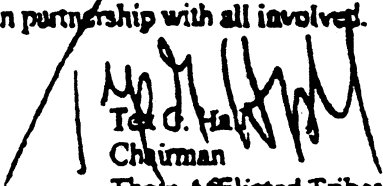
Re: Missouri River Tribes concerns about Endangered Species Act

May 8, 2000

Page 4 of 4

8. Upon receipt of the documentation we seek here, we will no doubt provide you with additional comments. We look forward to cooperating in this important endeavor. We are actively seeking funding for Mr. Blissner and other scientists whose experience elsewhere will prove invaluable for all those interested in the preservation of the Missouri River. This letter also constitutes a formal request for funding for further scientific research by the Tribes from both USFWS and ACOE.

9. In conclusion the Missouri River Tribes would like the Endangered Species Act Recovery Program to become an opportunity for the citizens of Tribes and states alike of the Missouri River to better understand the rights of Missouri River Treaty Tribes, Federal policy, the science involved, historic preservation, habitat restoration, recreation and global economic policies that are now at play on the Missouri River. With that knowledge in mind, we want to work thereafter together to develop and implement a plan for the Missouri River outside of the Endangered Species Act which takes the best each of us can offer. We look forward to working in partnership with all involved.


Ted G. Hall
Chairman
Three Affiliated Tribes
on behalf of the Missouri River Tribes
named above

cc: Tribal Chairmen, Missouri River Tribes

- Executive Director
Richard Bad Moccasin
- Member Tribes
Anishinabe & Sioux Tribes of Fort
Pek, North Dakota
- Member Tribe
Sisseton, Montana
- Chairman Sioux River Tribe
Spearfish, South Dakota
- Chippewa Cree Tribe
New Elder, Montana
- Crow Tribe
Crow Agency, Montana
- Crow Creek Sioux Tribe
Fort Thompson, South Dakota
- Eastern Shoshone Tribe
Fort Washakie, Wyoming
- Flamingo/Groton Sioux Tribe
Flamingo, South Dakota
- Fort Belknap Tribe
Hardy, Montana
- Kichawa Tribe in Kansas
Horton, Kansas
- Lower Sioux Sioux Tribe
Lower Sioux, South Dakota
- Northern Arapaho Tribe
Fort Washakie, Wyoming
- Northern Cheyenne Tribe
New Dune, Montana
- Sioux Tribe
New Elder, South Dakota
- Sioux Tribe
New Elder, South Dakota
- Sioux Tribe of Nebraska
Sioux, Nebraska
- Sioux Band of Pottawatomie
Sioux, Kansas
- Sioux River Tribe
Sioux, South Dakota
- Sioux Nation of Missouri
Sioux, Kansas
- Sioux Tribe
Sioux, Nebraska
- Sioux-Wapootan Sioux Tribe
Sioux Village, South Dakota
- Sioux Tribe
Sioux, North Dakota
- Sioux River Sioux Tribe
Sioux, North Dakota
- Affiliated Tribes
Sioux, North Dakota
- Mt. Sipek of Chippewa
Sioux, North Dakota
- Sioux Tribe of Nebraska
Sioux, Nebraska
- Sioux Tribe
Sioux, North Dakota

Mni Sose Intertribal Water Rights Coalition, Inc.
 P.O. Box 2890, 514 Mt. Rushmore Road
 Rapid City, South Dakota 57709-2890

June 9, 2000

Dr. Joseph W. Westphal
 Assistant Secretary of the Army for Civil Works
 US Army Corps of Engineers
 108 Army Pentagon
 Washington, DC 20310-0108

Dear Dr. Westphal:

At the Mni Sose Intertribal Water Rights Coalition's May 2000 Board of Directors' meeting, the Board authorized me to follow up on the status of the Coalition's Missouri River Basin Tribal Master Manual Program proposal.

The program would assist the Tribes in developing a tribal sensitive Master Water Control Manual "alternative" and would provide training to the Tribes in cultural resource and sacred site protection.

The initial version of the proposal was submitted to Colonel Michael Meuleners, Deputy Division Engineer of the Missouri River Region of the U.S. Army Corps in March 1999.

A revised version was submitted to Mr. Chip Smith, Office of the Assistant Secretary of the Army in August 1999. As to date, the Mni Sose Coalition has not received a response on either version.

Attached, for your review, are both versions of the Mni Sose Coalition's proposal. I would like you to meet with you to discuss the feasibility of the proposal.

I appreciate your consideration of my request.

Sincerely,

Richard Bad Moccasin
 Richard Bad Moccasin, M.P.H.
 Executive Director

enc.

X:\Working Files\DATA\CONF\TRIAL TRX\mem to Dr Westphal.doc

Telephone (605) 342-6054... Fax (605) 342-4722... E-mail rmoccasin@rapidcity.com... Internet www.mni

-1-

DRAFT Response to Mni Sose proposal of \$2.4M in further studies

Mr. Richard Bad Moccasin
Executive Director
Mni Sose Tribal Water Rights Coalition
Post Office Box 2890
Rapid City, South Dakota 57709-2890

Dear Mr. Bad Moccasin:

I am writing in response to your June 9, 2000, letter regarding your proposal dated September 13, 1999, entitled "Comments and Proposal on Impacts of ACOE Missouri River Operations". I have asked the Army Corps of Engineers to review your comments on the Master Water Control Manual preliminary Revised Draft Environmental Impact Statement (RDEIS) and to evaluate your proposal for further studies.

There has been much progress made in increasing Tribal input into the Missouri River Master Water Control Manual Environmental Impact Statement. Tribal input and consultation throughout the study process is critical to consensus building in the basin. The comments you provided will help in assessing impacts of the various flow alternatives on Tribal trust resources in the RDEIS. Your comments will be included in the Tribal Appendix of the RDEIS. Following release of the RDEIS, the Mni Sose and basin Tribes will have an opportunity to comment.

Your proposal included funding for further studies to be conducted by the Mni Sose on the "Impacts of Missouri River Operations on the Indian Tribes of the Missouri River Basin". Some of these proposed studies, such as collection and impact analysis of social-economic data, environmental data historic resource information, and facilities were included in the preliminary RDEIS. However, the information was not presented in the preliminary RDEIS specific to Tribes and reservations. The RDEIS will identify the impacts of the various flow alternatives on the economic and environmental resources specific to Tribes and reservations.

At this time, the Army Corps of Engineers does not believe your proposed studies

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are needed to analyze the impacts of the various flow alternatives or to select a preferred alternative. Therefore, they will not be contracting with the Mni Sose to conduct these studies. However, they are exploring what additional studies may be needed to implement specific flow changes, such as flow enhancement from Fort Peck, on the Tribal trust resources of the Assinboine and Sioux Tribes of Fort Peck.

At a recent meeting with Mr. Chip Smith of my staff, you inquired whether the Corps could provide funding for \$15,000 to the Mni Sose to participate in meetings and review of the US Fish and Wildlife Service's Biological Opinion. The Corps and the USFWS are in formal Section 7 consultation under the Endangered Species Act for the current operation of the Missouri River Mainstem Reservoir System, the Bank Stabilization and Navigation Project, and the Kansas River Project. The outcome of this consultation provides input into development of a Preferred Alternative (PA) that does not jeopardize the continued existence of threatened and endangered species. That alternative would be proposed in the RDEIS to be published by the NWD later this year. The primary responsibility for preparation of the Biological Opinion lies with the USFWS, whose focus is on the biology of the species. Therefore, funding the Mni Sose for review of the BO is not considered a Corps responsibility. The Corps responsibilities under Section 7 centers around implementation of the measures included in the Biological Opinion, in addition to the Corps broader analytical responsibilities under the National Environmental Policy Act. The Corps will consult with the basin Tribes and the Mni Sose on the impacts to the Tribes resulting from the PA or implementation of the measures contained in the BO.

I assure you that the Corps will continue their efforts to consult with basin Tribes and to seek Tribal input throughout the entire study process. Through this honest and open dialogue, I am confident that the Tribal Interests will be clearly reflected in the decisions on operation of the Missouri River system.

Sincerely,

Dr. Joseph Westphal

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Table of Studies Proposed by the Mni Sose Intertribal Water Rights Coalition, dated 13 September, 1999

Proposed Environmental and Economic Studies Specific to Indian Reservations Adjacent to the Missouri River	Analysis Currently in the Preliminary RDEIS*
• Collection of Social-Economic Data	• Yes
• Collection of Environmental Data	• Yes
• Wetland Habitat	• Yes
• Riparian Habitat	• Yes
• T&E terrestrial habitat	• Yes
• Cold and Warm River Fish Habitat	• Yes
• Erosion stream and reservoir	• Yes
• Sedimentation stream and reservoir	• Yes
• Navigation Channel	• Yes
• Collection of Historic Resource Information	• Yes
• Collection of Facility Information	• Yes
• Economic Impact Analysis	• Yes
• Environmental Resource Analysis	• Yes
• Cultural and Historic Resource Analysis	• Yes
• Impact of Alternative on Future Water Availability	• Yes

* The above studies are analyzed in the preliminary RDEIS. However, the data is not broken down by Reservation, but rather presented by river reach. To the extent practical, the data will be presented in the RDEIS on a Reservation by Reservation basin. The studies are limited to Corps of Engineers project lands and waters and do not include an analysis of the entire Reservation.

**CROW CREEK SIOUX TRIBE
FORT PECK TRIBES
OMAHA TRIBE
PONKA TRIBE OF NEBRASKA
SANTEE SIOUX TRIBE
STANDING ROCK SIOUX TRIBE
THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION
WINNEBAGO TRIBE
YANKTON SIOUX TRIBE**

August 3, 2000

To: General Strock, Corps of Engineers Fax: 503-808-3706

From: Dan Israel Tel: 520-468-2059 Fax: 520-468-2056

Re: **Indian Trust Assets and Environmental Justice on the Missouri River**

Several months ago at an MRBA meeting, the Corps and FWS committed themselves to an open Sec. 7 Endangered Species Act process in the Missouri River. As a result we Tribes submitted comments in June, 2000 asking for supporting documentation on the proposed re-operations at Gavins Point and Fort Peck Dams. We also alerted the Corps to the fact that in the re-operation process we would be seeking specific Indian Trust Asset and Environmental Justice commitments. We offered as an illustrative concern, the commitment in Sec. 6 of the 1944 Flood Control Act to make available domestic water supplies in the Upper Missouri River so long as other project purposes were not adversely affected.

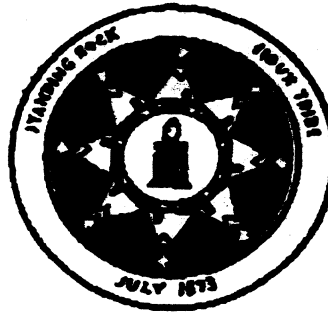
Now we find that the Corps is reluctant to share with us the draft FWS biological opinion and the associated science being relied upon to recover endangered species. Hopefully that can change so we are in a position to evaluate and perhaps improve on the new flow regimes. In the meantime, we have discussed and intend to pursue with the Corps Environmental Justice and Indian Trust asset issues and commitments. These matters should be addressed now so that the development of a refined master manual by the Corps will not be delayed by Tribal-Corps discussions on these emerging but nevertheless significant matters.

I would suggest that a one-day session be identified by you to discuss in detail ITA and Environmental Justice matters. Once the one-day session is scheduled by your office the Tribes would be in a position to utilize the intervening period to identify, describe, and where possible document specific Indian Trust Asset and Environmental Justice priorities. Some of these would be common to the Tribes. Many would reflect individual Tribal priorities.

We look forward to the Corps setting such a date and of submitting to the Corps in advance of the one-day session a document setting forth Indian Trust Asset and Environmental Justice concerns. We look forward to your response.

cc: Missouri River Tribal Chairmen

Charles W. Murphy
Chairman



Tom Iron
Vice Chairman

Elaine McLaughlin
Secretary

September 11, 2000

DISTRICTS

Robert Cordova
Cannonball District

Raphael See Walker
Fort Yates District

Joe Strong Heart
Wakpala District

Palmer Defender
Kandak District

Dean Bear Ribb
Bear Soldier District

Milton Brown Otter
Rock Creek District

Farren Long Chase
Little Eagle District

Randal White Sr.
Porcupine District

AT LARGE

- Jesse Takun Alive
- Reva Gates
- Pat McLaughlin
- Miles McAllister
- Ron Brown Otter
- Isaac Dug Eagle, Jr.

Brigadier General Carl A. Strock
U.S. Army Corps of Engineers
Northwestern Division
12565 West Center Road
Omaha, Nebraska 68144-3869

Re: Impacts of COE Operations on Standing Rock Indian Reservation

Dear General Strock:

Thank you for meeting with me on September 11, 2000, to discuss the impacts of the Pick-Sloan program on the Standing Rock Indian Reservation. It is an honor to meet with you.

I have served in Tribal government for over 15 years, and I have had the opportunity to work with many officials from the Corps of Engineers throughout that time. The impacts of the Corps of Engineers' activities on my Tribe remains the lowest priority of the Corps. I ask that our concerns be elevated as priorities of the Corps of Engineers.

My concerns are summarized as follows:

1. Continuing Destruction of Cultural Resources -
Unearthing of Human Remains at Mad Bear Camp

The Oahe project flooded and resulted in the forced relocation of four communities on the Standing Rock Reservation. Many traditional camps in the river bottomlands, with a wealth of cultural resources, were flooded. With the possible exception of the Three Affiliated Tribes, no one suffered more for the Pick-Sloan program than the Standing Rock Sioux Tribe.

Due to extreme water level fluctuations at Lake Oahe to accommodate other project purposes, wave action commonly results in the unearthing of human remains at the water's edge. Yet the Corps refuses to alter water flows or provide the needed bank

BRIGADIER GENERAL CARL A. STROCK

September 11, 2000

Page Two

stabilization to protect these sites.

There is a recent unearthing of numerous human remains at a very valuable site, Mad Bear Camp, near Wakpala community. My staff has worked to protect and properly repatriate these remains. Wakpala community members have established a camp to monitor and protect the remains of their ancestors.

As I understand, in order to provide navigation service downstream, the Corps of Engineers is planning to lower Lake Oahe levels another four feet. This shall result in the further unearthing of remains. This is outrageous.

I ask that the Corps of Engineers immediately stabilize the water levels of Lake Oahe, and that there be no further drawdown in the water levels. To do so would be to intentionally cause further unearthing of the remains of our ancestors at Mad Bear Camp. This would violate the Native American Graves Protection and Repatriation Act (NAGPRA). Our Tribe shall pursue all available legal recourse to prevent the Corps of Engineers from continuing to purposefully unearth our ancestors' remains, and destroy these cultural resources.

The long-term solution involves the construction of levees or other flood control structures. I would appreciate the implementation of long-term plans along these lines. In the meantime, this situation warrants modifications in the Annual Operating Plans to ensure that there is no further draw down of Lake Oahe and exposure of remains. In addition, our Tribe should be compensated for the time and expense of mitigating the damage to this site.

2. Inclusion of Tribal Concerns in the Master Manual Review and Update

Catastrophes such as the destruction of Mad Bear Camp occur because the Corps of Engineers fails to include Tribal concerns in the Master Water Control Manual. The Master Manual Review and Update provides the opportunity to incorporate Tribal concerns in the Master Manual.

Unfortunately, the Corps of Engineers has given little attention to the concerns expressed by our Tribe. Priority is given to endangered species. Indian water rights and protection of cultural resources are generally ignored in the Preliminary Revised Draft EIS. There is no recognition of the devastating impacts of Corps of Engineers' activities on the environmental and cultural resources of our Reservation. There is no compliance with Executive Order 12898, requiring Environmental Justice. Instead, the Corps tries to placate the states and the environmentalists, while ignoring the concerns of our Tribe.

BRIGADIER GENERAL CARL A. STROCK

September 11, 2000

Page Three

The Master Manual Review and Update should have a comprehensive Tribal component. The timeline for the study should be set back, with resources allocated to studying impacts of COE operations on Standing Rock and the other Reservations.

3. Pick-Sloan Program Land Along the Missouri River

One of the most egregious areas in which the Corps violates federal Indian policy involves the Pick-Sloan program lands along the Missouri River. The land acquired by the Corps of Engineers for the Pick-Sloan program are Sioux Nation Treaty lands. There is a well established rule of construction requiring federal agencies to implement public works programs that affect Indian Treaty rights as narrowly as possible. Only that amount of Treaty land that is absolutely necessary for the project, should be affected.

Instead, there are nearly 20,000 acres of taken land above Lake Oahe's maximum operating pool of 1620 feet mean sea level on our Reservation. This acreage should be returned to our Tribe immediately.

The Corps has delayed implementation of the transfer of this land to our Tribe for many years. At this point, I have been informed by Colonel Tillotson that the Corps shall commence land conveyances to the state of South Dakota for 23 sites, on October 1, 2000. This is outrageous.

The Pick-Sloan program lands are Sioux Nation Treaty lands, with important cultural resources. I request that the Corps of Engineers refrain from entering into leases with the state, as currently planned, until there is a comprehensive analysis of the impacts of these leases on Native American cultural resources.

In sum, our Tribe has suffered a great deal in the development and on-going operation of the Pick-Sloan program. Our concerns are ignored in the current Water Control Plan. This results in the destruction of valuable Native American cultural resources on our Reservation, such as at Mad Bear Camp. It is incumbent on the Corps of Engineers to make immediate modifications in the schedule for water releases, to prevent further unearthing of human remains on our Reservation. Physical structures should be provided for the future protection of these sites.

The Master Manual Review and Update should contain specific plans for the long-term protection of these sites, and to ensure that water flows accommodate the reserved water rights of the Standing Rock Sioux Tribe. The entire focus of the NEPA studies must shift to these issues.

BRIGADIER GENERAL CARL A. STROCK
September 11, 2000
Page Four

The Corps of Engineers should adhere to long-standing principles of federal Indian law and policy, and transfer all Pick-Sloan program lands at Standing rock that are above Oahe's maximum operating pool, back to our Tribe. No Pick-Sloan program lands should be leased or conveyed to the state of South Dakota, until all Treaty and cultural resource compliance issues have been addressed and resolved.

I appreciate your consideration of these issues.

Sincerely,



Charles W. Murphy, Chairman
Standing Rock Sioux Tribe

Charles W. Murphy
Chairman



Tom Iron
Vice Chairman

Elaine McLaughlin
Secretary

DISTRICTS

Robert Coulter
Cannonball District

Raphael See Walker
Fort Yates District

Joe Strong Heart
Walpole District

Palmer Defender
Rosal District

Dean Bear Ribs
Bear Soldier District

Milton Brown Otter
Rock Creek District

Farmen Long Chase
Little Eagle District

Randal White Sr.
Porcupine District

AT LARGE

Isaac Taken Alive

Reva Goes

Pat McLaughlin

Miles McAllister

Ann Brown Otter

Isaac Dog Eagle, Jr.

October 2, 2000

10/9/00

Brigadier General Carl Strock
U.S. Army Corps of Engineers
Northwestern Division
12565 West Center Road
Omaha, Nebraska 68144-3869

Re: Draft Biological Opinion on the Missouri River Master Manual Review and Update

Dear General Strock;

I write to comment on the Draft Biological Opinion on the Missouri River Master Manual Review and Update. I am concerned that the Draft Biological Opinion does not adequately account for the impact of mitigation measures that may be taken for habitat enhancement for endangered species on Indian reserved water rights. There has been no pre-decisional consultation with our Tribe on this matter. For these reasons, the Draft Biological Opinion has limited value as a decision-making tool in the Master Manual Review and Update.

The Standing Rock Sioux Tribe has commented to the Corps of Engineers in the past that the Master Manual Review and Update fails to account for the Winters Doctrine water rights of the Standing Rock Sioux Tribe. The Corps of Engineers has engaged in detailed analysis of the impacts of hundreds of operational alternatives on the resources of the Missouri River, however, there has been no analysis of the need to account for, let alone project, our reserved water rights. The Draft Biological Opinion continues this pattern of ignoring Indian water rights in the Master Manual Review and Update.

Executive Order 13084 requires pre-decisional consultation with our Tribe. This has not occurred, and further, the process of developing the Draft Biological Opinion has been a secretive one.

Interior Secretary Babbitt's Task Force on the Endangered Species Act and Indian Water Rights acknowledged that there is no accounting for Indian water rights in establishing baseline conditions for habitat improvement in the Missouri River Basin. The Fish and Wildlife Service must comply with the Secretarial mandate for protection of Indian reserved water rights in addition to addressing endangered species. It is my feeling the Draft Biological Opinion fails in this respect as well.

Thank you for your consideration of these comments.

Sincerely,

STANDING ROCK SIOUX TRIBE

Charles W. Murphy
Chairman



605-473-5561
Lower Brule, SD 57549

**Peg O'Brian, Native American Coordinator
Missouri River Region
U.S. Army Corps of Engineers
Omaha, NE 68102-4978**

Dear Peg:

I hope this letter finds you well. I wish to follow up on a couple of the comments that you and I had made last week, in Pierre, SD, in reference to the USACOE PRDEIS. In a Comment of mine, I had indicated that the Cheyenne River Sioux had several other avenues that could be followed to address their very real concern about high levels of contaminants coming down the Cheyenne River, and that Title VI was not, in my opinion, a likely candidate. I recommended that they involve themselves in the PRDEIS process, as well as continue approaching federal agencies who are involved in permitting mining activities on federal lands in the Black Hills, to help address some of their issues.

The Lower Brule Sioux Tribe is also concerned with potential contamination entering the Missouri River through the ground and surface waters that feed it, and which contamination may subsequently deposit and remain in the river bed.

You stated that the PRDEIS was not an appropriate place to deal with this issue, and this statement is the one I wish to focus on.

As I discussed with you following the meeting in Pierre, I disagree with you and I believe that the Master Water Control Manual is one of the best places to address this concern. The various water flow regimes that the Corps is looking to, will impact to a greater or lesser degree the amount of sediment that is allowed to build up in any given area of the Missouri River. There is a direct correlation between the level of sedimentation on the Missouri River, and the various proposed "alternatives" for the Master Water Control Manual. Whatever contaminants are in the sediment, the potential for higher concentrations of contaminant laden sediment to deposit and remain in the river, will depend on which water flow regime the Corps selects. The potential accumulative effects from any concentrated contamination will be devastating to an already fragile ecosystem and will be directly impacted by the action that will result from a final selected "alternative".

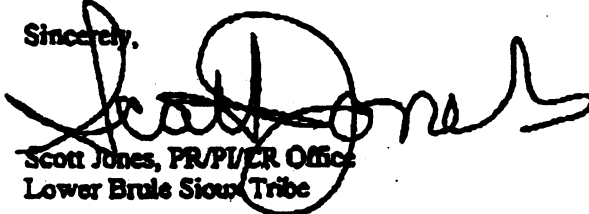
I recognize that there are several other entities and sites which are contributing the contaminants in the first place. But again, the very real issue of contaminant concentration in the river bed, as well as the waters of the Missouri River is directly related to the water flow regime that the Corps follows. The issue that needs addressing now, is what data is available on current contaminant levels in the sediment/riverbed and in the river in general. This is a part of what Chairman Bourland and his environmental staff is requesting, and we agree with him. Though this is a much broader issue than can be dealt with under Title VI. We believe you're statement was incorrect, and that a response is required under the EIS process which you are currently involved in, specifically related to sedimentation impacts the various "alternatives" will have on

the Tribes specifically and the river in general. I have consulted with Chairman Jandreau on this matter and he has directed me to communicate this position to you as an official request of the Lower Brule Sioux Tribe.

I trust that you will write me back at your earliest convenience in regard to this issue.

Thank you.

Sincerely,



Scott Jones, PR/PI/ER Office
Lower Brule Sioux Tribe

- XC: Chairman's file
Wildlife file
Cleve Her Many Horses, LB-BIA
LBST Council Members
Chairman Gregg Bourland, CRST
Steve Emery, CRST
Governor William Janklow
Senator Tom Daschle
Jim Berkley, US-EPA

FORT PECK TRIBES

Assiniboine & Sioux

November 20, 2000

Ms. Becky Latka
CENWO-PM-AE
215 North 17th Street
Omaha, NE 68102

Dear Ms. Latka:

These comments on the "Fort Peck mini-test" are formally filed by the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation in northeastern Montana. The Tribes' Reservation is bounded on the south by the Missouri River below Fort Peck Dam as shown on the accompanying map. Approximately 75% of the north or left bank of the Missouri River between Fort Peck Dam and the backwaters of Lake Sakakawea near the North Dakota border lie within the Fort Peck Indian Reservation in the reach to be affected by testing.

There has been no substantive consultation nor coordination with the Assiniboine and Sioux Tribes respecting the "Fort Peck mini-test" or the "Fort Peck full-test" as required by the "Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments" (April 29, 1994; 3 CFR, 1994 comp., p. 1007) or Executive Order 13175 (Nov. 6, 2000). In this case, the degree of proprietary interests of the Tribes, tribal members and private landowners within the Fort Peck Indian Reservation compel attention to our concerns respecting the testing and any proposed changes in the operation of Fort Peck Dam in furtherance of the update and revision of the Master Manual for the operation of the Missouri River.

Executive Order 13175 acknowledges a unique legal relationship with Indian tribal governments set forth in the Constitution of the United States, treaties, statutes, Executive Orders and court decisions, including the enactment of numerous statutes and promulgation of numerous regulations that establish and define a trust relationship with Indian tribes.

Until our concerns are fully addressed and action is taken by the governing body of the Tribes to approve or disapprove of a mini-test or full-test, the Corps of Engineers is respectfully requested to comply with Executive Order 13175 and to refrain from testing. Our concerns and requests are set forth below.

The Assiniboine and Sioux Tribes and Dry Prairie Rural Water are the beneficiaries of Public Law 106-382, the Fort Peck Reservation Rural Water System Act of 2000, executed by the President on October 27, 2000, which provides, among other things, for the diversion of Missouri River water at an intake near Poplar, Montana, treatment of diverted water to meet requirements on the Safe Drinking Water Act, as amended, and distribution of drinking water throughout the Fort Peck Indian Reservation and a four county area of northeastern Montana. The Corps of Engineers must provide the Tribes with a plan for protection of the intake site,

A1-537

including related facilities in the floodplain of the Missouri River, and a plan for mitigation and/or replacement of facilities stemming from the full-test and any proposed change in operating procedures at Fort Peck Dam to accommodate a future, artificial spring rise. The plan for mitigation and/or replacement of facilities must address a mechanism for financing repairs and/or replacement of the intake and related facilities from funds available from the Corps of Engineers or federal entities other than the entity allocated for the operation, maintenance and replacement of the Fort Peck Reservation Rural Water System.

The Corps of Engineers must likewise provide the Tribes with a plan for funding the additional costs of treating Missouri River water to remove enhanced levels of suspended solids at the water treatment plant for the Fort Peck Reservation Rural Water System.

The Corps of Engineers must provide the Tribes with a plan for protection, mitigation/replacement/funding of existing intake sites along the north bank of the Missouri River for the Fort Peck Irrigation Project and for other intakes for irrigation or other purposes, including new tribally-proposed irrigation intakes, within the boundaries of the Reservation.

The Corps of Engineers must provide an analysis of the impact of the mini-test, full-test and any future operational changes at Fort Peck Dam on the erosion of the north or left bank of the Missouri River. The analysis should include the impact of future operations on the mechanisms of accretion and avulsion and the impact of future operations on changes in ownership that might be caused by movement of the banks or channels of the Missouri River. The analysis should also include the impact of future operations on the elevation of the bed of the River as a result of aggradation or degradation. The analysis should provide maps of the Missouri River Valley between the east and west boundaries of the Fort Peck Indian Reservation outlining the soil types, geologic anomalies and any other factors that will permit definition of areas more susceptible to erosion and areas less susceptible to erosion. The analysis must provide conclusions with respect to means of compensating landowners within the Fort Peck Indian Reservation for loss of land whether those landowners are the Tribes, allottees or private owners.

The Corps of Engineers must provide a plan for review by the governing body for assurances of safety during testing and future operations. The plan should address, among other things, the methods of notification and warning before and during testing or operating procedures to artificially produce a spring rise. The plan should acknowledge and address warning and safety procedures for cultural and spiritual ceremonialists, recreationists, landowners, wood gatherers, hunters, fishermen and others that would normally occupy the River, its banks and its floodplain. The plan should also address the potential for rainfall and/or snow melt events in the Missouri River Basin above Fort Peck Dam, such as the 1948, 1952 and 1964 events, and a loss of flood control capability due to revised operational procedures to maintain reservoir levels at or near spillway elevations in the May/June period in order to accomplish the release of water from the spillway for an enhanced spring rise. The plan should also address any known concerns with regard to the capability of the spillway to perform properly during the mini-test, the full-test or during future operations.

The Corps of Engineers must provide a plan for review by the governing body for the

protection of human remains, cultural, historical and archeological resources known to exist in the Missouri River Valley and that may in the future be exposed by testing and/or future operating procedures.

The Corps of Engineers must clearly present a report to the governing body on the benefits to the Tribes, the lands and their resources from the proposed revisions in operations of Fort Peck Dam. The report must address economic, environmental and cultural benefits. The report must also address the impact of the mini-test, full-test and any other operational changes on aquatic habitat, riparian habitat, endangered or threatened species and upon species that are not threatened or endangered. Moreover, the report must address the impact of changes in operation of Fort Peck Dam on hydropower resources of the Eastern Division of the Sloan and, more specifically, on the resources from which the Fort Peck Assiniboine and Sioux Tribes will receive federal power preferences rates beginning January 1, 2001. The report should provide the Tribes with an assessment of the financial impact of operational changes on the Tribes' hydropower allocation as well as the financial impact on the Tribes from any other positive or negative changes.

Finally, the Corps of Engineers must prepare and present a detailed plan to establish field baseline conditions and thereafter to monitor changes in the field to the River bank, the River bed, suspended sediments, bedload, aquatic habitat, riparian habitat and other resources and facilities. The plan should describe how changes caused by revised operating procedures will be determined (relative to historic operating procedures) and how those determinations of marginal changes will be used to define damages, mitigation requirements and compensation.

Please provide a timeframe for response to our request for consultation and coordination consistent with Executive Order 13175. The Tribes are willing to correspond and/or meet with representatives of the Corps of Engineers at any time to clarify our concerns and requests.

Sincerely,

Artyn B. Address

Artyn B. Address, Chairman
Fort Peck Assiniboine and Sioux Tribes

cc The Honorable Conrad Burns
The Honorable Max Baucus
The Honorable Dennis Reberg
The Honorable Marc Racicot
Colonel Joseph Westphal
Secretary Bruce Babbitt
Rick Knick

DRAFT

Indian Trust Asset and Environmental Justice Meeting with the Corps of Engineers, 8:00 A.M., November 29, 2000, Omaha, NE Draft Briefing Paper Submitted by the Participating Tribes

Introduction:

The concept of Indian Trust Assets evolves from the fact that the United States has a trust responsibility to protect and maintain rights reserved by or granted to American Indian Tribes or American individuals. This trust responsibility requires that Federal agencies take actions reasonably necessary to protect ITAs. The Bureau of Reclamation has taken the lead among the Federal agencies dealing with rivers and Tribes, and the Corps of Engineers has made a commitment to also "involve Tribes in Corps programs, projects and other activities" to expand Tribal economies.

When an ITA has been impacted by a Federal project such as trust lands, mineral rights, cultural resources, water rights, or hunting and fishing rights, then the federal agency in its action document must analyze those interests, the adverse impacts, and set forth appropriate mitigation and/or compensation commitments. As the Corps moves forward to address Missouri River reoperations, it should carefully address ITA issues.

Environmental Justice issues are different. They evolve out of Executive Order 12898, dated February 11, 1994. That Executive Order provides that a Federal agency shall make achieving Environmental Justice part of its mission by identifying and addressing as appropriate disproportionately high and adverse human health and environmental effects of its programs. While ITAs deal primarily with Indian lands and natural resources, Environmental Justice includes any adverse effect on minority and low income populations. In the Missouri River, as Congress expends millions of dollars to recover endangered species, restore native fish, aquatic and terrestrial habitat, cultural resources and River economies, Environmental Justice requires a review of the availability of those Federal benefits to minority and low income households and appropriate follow-through commitments.¹

1. Fort Peck Tribe Reservation

¹ These preliminary Tribal summaries set forth an initial basis of conversation with the Corps. As we pursue these discussions, the descriptions will be expanded, refined, and where necessary corrected. At the request of the Corps, the Tribes do not discuss specific matters embraced within three ongoing lawsuits between the Corps, the Three Affiliated Tribes, the Standing Rock Sioux Tribe, and the Yankton Sioux Tribe.

The Missouri River was dammed at Fort Peck in the late 1930's. The Corps of Engineers operates that Dam and the Fort Peck Reservoir. The Missouri River downstream of the Fort Peck Dam is the Southern border of the Fort Peck Indian Reservation. This is a Reservation of over 2-million acres with 12,000 members living on the Reservation. The Missouri River runs along the Southern border for approximately 80 miles. The River is navigable.

Prior to the 1938 dam, the River meandered in its natural form, it had ample wetlands, rich soils, and plentiful fish and game. Tribal members took full advantage of those natural riches. Currently, the River is channelized in many respects. There is limited wetlands. There is extensive irrigation which takes place on either side of the River. In comparison to many of the other Indian Reservations on the Missouri River, the Fort Peck Reservation has not seen vast portions of its lands inundated, valuable fish and game and vegetation destroyed, and communities moved. Nevertheless, the Fort Peck Reservation has had much of its natural Missouri River habitat and wetland assets eliminated.

From an Environmental Justice point of view, the Fort Peck Tribes are in a position to say to the Federal Government that as you expend millions of dollars to improve the fisheries, habitat, and historic values along the Missouri River you must make some funds available to the Fort Peck low income community. The low income members of the Fort Peck community believe that Federal funding under environmental Justice would allow it to more aggressively participate in the Lewis & Clark ceremonies. Parks could be installed, boat docks constructed, and one or more Tribal tourism boats acquired and operated in the navigable waters of the Missouri River below Fort Peck Dam.

2. Standing Rock

Standing Rock has approximately 2-million acres of land, 55,000 acres were inundated in the 1950's when the Corps built the Oahe Dam and Reservoir. Approximately 12,000 members live on the Reservation and engage in irrigation, dry land farming and grazing. The eastern border of the Reservation abuts the Oahe Reservoir for 60 miles. Prior to the Reservoir, the River meandered, had rich soils, wetlands, fish and game. These bottom lands which provided subsistence to the members of the Tribe for generations were taken and flooded by the Corps of Engineers. The Corps needs to address those actions in its Indian Trust Asset discussion and make specific commitments as to how those adverse effects can be mitigated and/or compensated.

With respect to Environmental Justice, Lewis & Clark ceremonies will provide an opportunity for the Tribe to build boating docks and to develop schooners for recreation on the Oahe Reservoir. Environmental Justice assistance when matched with other capital formation also would permit increased fishing and hunting and native terrestrial habitat to be developed for the benefit of Tribal members and tourism.

3. Yankton Sioux Tribe

This Tribe has approximately 36,000 acres of land along the Missouri River. It is a Reservation that has been severely impacted by United States Corps activities. The community of White Swan had to be relocated. Fort Randall Dam and Lake Francis Case has inundated much of the lands of the Tribe. Traditional fishing and hunting activities were diminished when the River was converted from a meandering natural flow to a controlled Reservoir. Because of this adverse history and because of continuing problems with sacred sites and burial remains the Tribe opposes Federal Lewis & Clark activities along the Missouri River. But, under an Environmental Justice request, the Tribe has social significant needs which require attention and assistance, particularly a modern up-to-date facility for its elders.

4. Crow Creek

The Crow Creek Reservation occupies about 26,000 acres of land. Approximately 50 miles of it abuts the Missouri River. There is a population of 1,800 living on the Reservation. The Corps' activities have included the construction at the up-river portion of the Reservation of the Big Bend Dam, 8 electric generators, and the inundation of Lake Sharp, as well as the Fort Randall Dam and Lake Francis Case at the downstream portion of the Reservation. These two dams and reservoirs have fundamentally changed the natural meandering flow of the River. Prior to the construction by the Corps, the wetlands and habitat associated with the meandering river grew all kinds of wild fruit, grapes, plums, cherries, currants which were relied upon by Tribal members. Also, obviously ample fishing and game occurred on those places. The inundation of Reservation lands resulted in compensation to allottees but not to the Tribe.

Environmental Justice funding would allow the Tribes to considerably improve and increase habitat associated with the River and would allow it to replace barren soils with wetlands and terrestrial habitat as well as improving fishing and hunting opportunities for Tribal members and guests.

5. The Winnebago Tribe

The Winnebago Reservation in Nebraska and Iowa has about 27,000 acres of trust lands. 1,300 Tribal members reside on the lands. Prior to the construction of dams and reservoirs by the Corps, the Missouri River meandered through and adjacent to the Winnebago Reservation. There was significant river bottoms for irrigation, wetlands, and fish and game were plentiful. The River has been converted from a rich and bountiful natural watershed to a highway used to pull barges on the River. There are no wetlands. There is no rich habitat. While there is some farming, there is only minimum hunting and fishing. Moreover, water quality has been compromised by agriculture return flows containing excess pesticides.

From an Environmental Justice perspective the Winnebago Tribe and its members – a poor and isolated community – are attempting to develop economically self-sufficient activities relating to the Missouri River. For example, the Tribe is pursuing the use of a ferry to move casino users from the Nebraska to the Iowa side. Use of a modern ferry will eliminate an 80-90 mile round trip

relying on bridges. The Reservation is located close to Sioux City, Iowa, a community of 300,000 people which creates for the Tribe an opportunity – with Federal Environmental Justice assistance – to increase its recreation activities. Camping facilities and other amenities including improved wetlands and a fish hatchery are also being pursued by the Tribe.

6. Omaha Tribe

The Omaha Reservation in Nebraska and Iowa includes about 9,500 acres of land. Prior to the realignment of the Missouri River, deer hunting was common and fishing for catfish, bass, carp and walleye was of importance to the Tribe and its members. This Reservation like the Winnebago Reservation is situated close to the town of Sioux City and the Tribe is in a position to expand its recreation and other economic development opportunities.

About 3,000 members live on the Reservation. Some members of the community were removed by the Corps of Engineers during the 1960's and wetlands, fishing and hunting, and other uses of the lands and waters of the Missouri River were substantially reduced. The Tribe currently is developing recreation at the Big Elk Park and, as in the case of the Winnebago Reservation, is poised to expand its River and recreation facilities.

7. Fort Berthold

Fort Berthold Reservation embraces 500,000 acres of land in north central North Dakota. The Corps constructed Garrison Dam and Lake Sakakawea during the 1950's and by so doing inundated thousands of acres of Tribal lands. The lake split the Reservation and moved Tribal members from rich fertile agricultural bottom land up to the grasslands not suited for the Tribe's agricultural traditions. Lake Sakakawea is a long lake and has virtually eliminated meandering of the Upper Missouri River as well as the flood lands, wetlands, and fish and game central to the Tribes' way of life. In their place has emerged over time noxious weeds which are endemic to the Reservoir area. The lands adjacent to the Reservoir are barren and have very few of the wetland characteristics that existed prior to the construction of Garrison Dam.

Current Corps operations are increasing adverse effects on many of these Reservations. At Lake Sakakawea and Lake Oahe the current lake levels have dropped up to 12 feet partly in response to low precipitation in the Missouri Basin over the last several years. Also, this substantial drop has been caused by the disproportionate role given by the Corps to navigation in the Lower Missouri River. The dropping of the Lake levels deprives the Tribes and their members and non-Indian business partners of the Tribes full and unconditional access to these important Reservoirs. The Lake dropping also creates a substantial scar to the land and waters and takes away from the ongoing efforts of these Missouri River Tribes to enhance their recreation opportunities, to protect historic cultural properties, and to restore endangered fish, native fish, and aquatic and terrestrial habitat.

With respect to Environmental Justice priorities, the Three Affiliated Tribes are in a position to

utilize Federal Environmental Justice financing to improve their recreation facilities, to more actively participate in Lewis & Clark ceremonies, to build boat docks and develop sight and sound Lewis & Clark and historic property and traditional cultural property monuments for both the benefit of the Tribe and its members and non-Indian visitors.

TRENTON INDIAN SERVICE AREA

P.O. Box 210
Trenton, North Dakota 58853
Telephone: (701) 572-8316
Fax: (701) 572-0124

November 30, 2000

Ms. Becky Latka
CENWO-PM-AE
215 North 17th Street
Omaha, Nebraska 68102

Dear Ms. Latka;

Please consider this letter as a response to the Fort Peck Flow Modification Plan currently being proposed by the Corps of Engineers.

At this point in time, the Trenton Indian Service Area is adamantly opposed to the proposed Fort Peck Flow Modification Plan. The Trenton Indian Service Area's opposition to this plan is based on the following:

- Lack of consultation with those Tribes/Tribal organizations that may be affected by the proposed plan.
- A formal study was not done by a credible, independent firm that would have validated or confirmed the proposed course of action.
- The information that was presented provided no assurances to the Trenton Indian Service Area that flooding would not occur at the recreation area if the spillway and powerhouse flows exceeded 20,000 c.f.s.
- Mitigation plans were not developed for those Tribes, irrigation cooperatives, individual tribal members, or private landowners that may be potentially affected by the loss of land, replacement of equipment and/or facilities, loss of economic development opportunities, etc.

The Trenton Indian Service Area strongly believes that all parties which may be impacted either directly or indirectly, should have been brought to the table to discuss this issue before any kind of action plan was developed. Given the past history of the Corps of Engineers, this proposed action without adequate consultation once again reaffirms the management style of the agency.

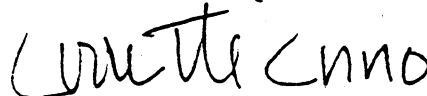
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Ms. Becky Latka
Corps of Engineers
Page 2

At this point in time, in order for the Corps of Engineers to secure the support that is needed for this project, a thorough analysis needs to be completed by an independent firm. This analysis would need input from all of the affected parties before it could be considered truly accurate. Thank you for allowing the Trenton Indian Service Area the opportunity to comment.

Sincerely,

TRENTON INDIAN SERVICE AREA



Everette Enno
Chairman

Copy: Senator Byron Dorgan
Senator Kent Conrad
Congressman Earl Pomeroy

*Missouri River Master Water Control Manual
Review and Update FEIS*

Tribal Correspondence

2001

January to September



**SICANGU LAKOTA TREATY COUNCIL
BOX 430
ROSEBUD, SD 57570**

Chartered by the Rosebud Sioux Tribe 1992

05 MARCH 2001



Mr. Carl A. Strock
Brig. Gen., U.S. Army
Division Engineer
12565 West Center Road
Omaha, Nebraska 68144 - 3869

Dear Mr. Strock;

In response to your letter dated February 14, 2001 to President Kindle, the tribes have experienced the federal agencies conducting consultation hearing, but do not see tribal comments, reflective in their comments:

- 1) Legislature proposals are being conducted and considered without the tribes being true stakeholders.
- 2) The ACOE needs to incorporate federal laws concerning cultural resources into the master manual for their consideration and accept your trust responsibility as a federal agent.
- 3) Congressional delegate have an interest of the Missouri River and with the development of water regardless of reserved senior water rights held by tribes.
- 4) The tribes are still waiting for the treaty analysis to be done by the assistant secretary of civil works.
- 5) Tribes need to go on record to determine their water needs within their water needs within their water arteries of their homelands before any federal agencies suggest quantification of Indian Water Rights.

These are some of my concerns on you Revised draft Environmental Impact Statement, on the master manual.

Thank you for your acknowledgement of this letter.

Sincerely,

FA-478mont Fallie

A1-551

2/2 P. 1323 No.

PROGRAMS MANAGEMENT

1:41PM

Mar 22 2001



MANDAN, HIDATSA, & ARIKARA NATION

Three Affiliated Tribes • Fort Berthold Indian Reservation

HCJ Box 2 • New Town, North Dakota 58763-9402

TRIBAL BUSINESS COUNCIL
(701) 627-4741
Fax (701) 627-3405

March 14, 2001

Brigadier General Carl Strock
United States Army Corps of Engineers
Portland, OR

RE: ACOF Obligation to Missouri River
Tribal Nations

Dear General Strock:

At our November 29, 2000 meeting in Omaha, Nebraska we (Mandan, Hidatsa & Arikara Nation) proposed specific documents outlining the scope of the Indian Trust Assets (ITA) and Environmental Justice analyses that we believe must be included in the Missouri River Master Manual now being developed by the ACOE. It is our understanding that the draft Environmental Impact Statement will become publicly available sometime in the summer of this year. It is our impression that the Corps' as of this time has taken no concrete and deliberate steps to develop the background information needed for ITA and Environmental Justice analyses that are compatible to the analyses developed by the Department of the Interior and that was provided to you by the MIAN.

We recently discussed this matter with EPA. They have also repeatedly raised these concerns with the Corps' environment documents, in part because of the Corps' failure to adequately address Indian Trust Asset and Environmental Justice matters.

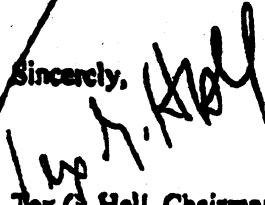
Because these two issues (ITA and EJ) provide the quintessential description of the environment in which the Corps' actions are being implemented and will impact alternative proceedings of present and future actions of the Corps', this analysis is crucial and fundamental in the building of a modern EIS. As you know, such analyses include a detailed and specific discussion of land, water, cultural resource properties, habitat, fisheries wildlife and other rights that each Tribe enjoyed before the Corps' presence on the Missouri River. The analysis also evaluates the adverse impacts caused by the Corps' to each of these assets; sets forth alternative ways of mitigation and sets forth alternative ways in which compensation can be made available for such adverse impacts.

Letter to General Street
Northern Division
US Army Corps of Engineers
EIS Environmental Justice, Indian Trust Asset Analysis in Draft Master Manual EIS
March 24, 2001
Page 2 of 2

Because this analysis is so fundamental, I have been advised that the Corps' continuing failure to comport with Federal law will likely result in one or more of the Missouri River Tribes seeking an injunction and/or damages. Of course the purpose of this letter is to avoid all of that. We remain willing and able to assist in appropriate fashion to obtain a full and complete Indian Trust Asset and Environmental Justice analyses in time for the issuance of the draft EIS in the summer of 2001.

We urge you to contact us further about this issue at your earliest convenience so that these issues can be addressed.

Sincerely,



Tex G. Hall, Chairman
Mandan, Hidatsa & Arikara Nation

Charles W. Murphy
Chairman



Tom Iron
Vice Chairman

Elaine McLaughlin
Secretary

DISTRICTS

Robert Cordova
Cannonball District

Raphael See Walker
Fort Yates District

Joe Strong Heart
Wakpala District

Palmer Defender
Kenel District

Dean Bear ribs
Bear Soldier District

Milton Brown Otter
Rock Creek District

Farren Long Chase
Little Eagle District

Randal White Sr.
Porcupine District

AT LARGE

esse Taken Alive

Reva Gates

Pat McLaughlin

Miles McAllister

son Brown Otter

ac Dog Eagle, Jr.

May 1, 2001

The Honorable Joseph W. Westphal, Acting Secretary
of the Army
U.S. Department of the Army
101 Army - Pentagon
Washington, D.C. 20310-0101

Dear Secretary Westphal:

The Standing Rock Sioux Tribe respectfully submits the attached resolution rejecting, among other things, the Master Manual Update and environmental impact statement documents and processes in support of the Master Manual Update.

The commitment that the Master Manual Update makes to downstream navigation interests, upstream recreation interests and endangered and threatened species is a considerable concern to the Tribe and its membership. Of equal concern is the lack of commitment to the protection or preservation of the water rights of the Standing Rock Sioux Tribe. These factors have caused the governing body to fully reject the effort and to call upon congressional members and others in President Bush's Administration to fully review the consequences of the Master Manual Update on our water rights and to join us in seeking a better course and outcome.

The Corps of Engineers contends in Master Manual documents that future operation of the mainstem Missouri River dams and reservoirs will be modified to reflect future decrees at completion of the appeal process or federal legislation establishing the measure of Indian water rights. Overlooked by the Corps of Engineers is the fact that commitments in the Master Manual diminish the ability of a future Court or Congress to equitably address the water rights of the Standing Rock Sioux Tribe in the future because mortgages, releases, debt, titles and, more generally, economic development outside the Reservation will be based on the commitments now proposed in the Master Manual. It is these pressures on the state, federal and Supreme Courts and the Political Process that result in Creative Laws to Diminish Our Vested Rights to the Use of Water and Circumvent the Equitable Compensation Provisions of the Constitution.

P.O. BOX D • FORT YATES, NORTH DAKOTA 58533
PHONE: 701-354-7201 or 701-354-7202 • FAX 701-354-7299

A1-555

THE HONORABLE JOSEPH W. WESTPHAL

May 1, 2001

Page Two

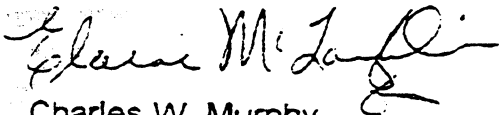
The drafts of the environmental impact statement prepared by the Corps of Engineers have failed completely to address the economic impact of the Master Manual Update on the Standing Rock Sioux Tribe. No consideration has been given to economic conditions on the Reservation and the impact that Master Manual commitments will have on the future Indian population given that the Tribe possesses an equitable title to rights to the use of water in the Missouri River.

Without diminishing the force or effect of our conclusions respecting the Master Manual, please accept our observation that the Corps of Engineers' staff working on the Master Manual Update have, for the most part, conducted themselves in an honorable and professional manner. It is the policy of the Corps of Engineers on this matter that is at issue.

Finally, please ensure that the documents prepared by the Corps of Engineers on the Master Manual reflect the opposition of the Standing Rock Sioux Tribe to the complete set of documents including the environmental impact statement.

Sincerely,

STANDING ROCK SIOUX TRIBE



Charles W. Murphy
Chairman

CWM/eie

cc: The Honorable John Ashcroft, Attorney General
The Honorable Gale Norton, Secretary
The Honorable Christie Whitman, EPA Administrator
The Honorable Tom Daschle
The Honorable Tim Johnson
The Honorable John Thune
The Honorable Byron Dorgan
The Honorable Kent Conrad
The Honorable Earl Pomeroy

Charles W. Murphy
Chairman



Tom Iron
Vice Chairman

Elaine McLaughlin
Secretary

May 1, 2001

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Little Eagle District

Randal White Sr.
Porcupine District

AT LARGE

Leslie Taken Alive

Reva Gates

Pat McLaughlin

Miles McAllister

Lon Brown Otter

Mac Dog Eagle, Jr.

The Honorable Gale A. Norton, Secretary
U.S. Department of the Interior
1849 C. Street, N.W.
Washington, D.C. 20240

Dear Secretary Norton:

The importance to the Standing Rock Sioux Tribe of its rights to the use of water in the Missouri River, its tributaries and aquifers is underscored by the enclosed resolution of the governing body. There is much concern among our tribal leaders and our membership that efforts are increasing to diminish our valid and reasonable claims to water rights. We strongly believe that those water rights stem from time immemorial and are based on an unbroken chain of title from our ancestors. The United States has previously acknowledged our property rights and dominion over vast resources in treaties of 1851 and 1868. The Standing Rock Indian Reservation is part of the Great Sioux Reservation established by the Treaty of 1868, which was subsequently divided into nine separate reservations by an 1889 Act of Congress.

The Tribe humbly requests an opportunity to meet with you on the specific subject of our rejection of the Master Manual for the future operation of the Missouri River mainstem reservoirs by the Corps of Engineers. The draft Master Manual represents a continuing erosion of available water supply in the Missouri River by allocating flows, regulated by the federal reservoirs, to downstream navigation, upstream recreation and basin-wide habitat for endangered and threatened species, among other minor uses for irrigation, domestic and industrial purposes. We need your assistance to effect changes to the Master Manual that provide a mechanism to preserve our vested water rights.

The Standing Rock Sioux Tribe cannot remain silent as the completion of the Master Manual approaches. The Master Manual, if approved in its present form, will make commitments for all of the remaining water supply in the Missouri River to the States and various interest groups. Those commitments are detrimental to the water rights of the Standing Rock Sioux Tribe and its membership. The only approach

THE HONORABLE GALE A. NORTON, SECRETARY

May 1, 2001

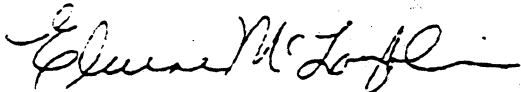
Page Two

offered by the Corps of Engineers is to modify the operation of the reservoirs in the future to (1) accommodate our water rights at such time as a final decree has been entered and all appeals have been taken or (2) at such time as Congress enacts legislation specifying the quantum of our water rights. This approach has been utilized to our detriment for more than half a century while the United States, the States and special interests have developed the waters of the Missouri River Basin. The Standing Rock Sioux Tribe has lagged in that development although you will be pleased with developments since 1986 that have provided for rural water development on the Reservation and Interior support for irrigation of small tracts.

We will be in contact with your Scheduling Secretary to arrange a meeting in your office during the week of June 10, 2001. We will attend the meeting with great hope and anticipation that you and the new Administration can help us bring reason to the Master Manual process and outcome. We simply seek an equitable operation of the Missouri River dams and reservoirs that will provide the requisite care, skill and diligence by the Trustee to preserve, protect and develop the water rights of the Standing Rock Sioux Tribe for present and future purposes.

Sincerely,

STANDING ROCK SIOUX TRIBE



Charles W. Murphy
Chairman

CWM/eie

cc: The Honorable John Ashcroft, Attorney General
The Honorable Joseph W. Westphal, Acting Secretary
of the Army
The Honorable Tom Daschle
The Honorable Tim Johnson
The Honorable John Thune
The Honorable Byron Dorgan
The Honorable Kent Conrad
The Honorable Earl Pomeroy

A1-558

RESOLUTION NO. 106-01

FORMALLY ESTABLISHES THE STANDING ROCK SIOUX TRIBE'S POLICY ON ITS ABORIGINAL, TREATY AND WINTERS RIGHTS TO THE USE OF WATER IN THE MISSOURI RIVER TO MEET ALL PRESENT AND FUTURE USES; AMONG OTHER THINGS

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Article 16, and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the Constitution of the Standing Rock Sioux Tribe, Article IV, Section(s) 1 (a,b,c,h and j), is authorized to negotiate with Federal, State and local governments and others on behalf of the Tribe, is further authorized to promote and protect the health, education and general welfare of the members of the Tribe and to administer such services that may contribute to the social and economic advancement of the Tribe and its members; and is further empowered to authorize and direct subordinate boards, committees or Tribal officials to administer the affairs of the Tribe and to carry out the directives of the Tribal Council; and is empowered to manage, protect, and preserve the property of the Tribe and natural resources of the Standing Rock Sioux Reservation; and

Master Manual EIS Specifically Excludes Consideration of Indian Water Rights

WHEREAS, the United States Army Corps of Engineers makes the following statement describing how the Corps fails to recognize or consider Indian water rights in its Master Water Control Manual for the future operation of the Missouri River, thereby committing Missouri River water to operational priorities and creating an insurmountable burden for the future exercise of the rights to the use of water by the Standing Rock Sioux Tribe as reserved from time immemorial:

The Missouri River basin Indian tribes are currently in various stages of quantifying their potential future uses of Mainstem System water. It is recognized that these Indian tribes may be entitled to certain reserve or aboriginal Indian water rights in streams running through and along reservations. Currently, such reserved or aboriginal rights of tribal reservations have not been quantified in an appropriate legal forum or by compact with three exceptions.... The Study considered only existing consumptive uses and depletions; therefore, no potential tribal water rights were considered. Future modifications to system operation, in accordance with pertinent legal requirements, will be considered as tribal water rights are quantified in accordance with applicable law and actually put to use. Thus, while existing depletions are being considered, the Study process does not prejudice any reserved or aboriginal Indian water rights of the Missouri River basin Tribes. (PDEIS 3-64); and

WHEREAS, the failure of the United States, acting through the Corps, to recognize and properly consider the superior rights of the Standing Rock Sioux Tribe must be rejected by the Tribe for the reason that the Master Manual revision and update is making irretrievable commitments to (1) navigation in the lower basin, (2) maintenance of reservoir levels in the upper basin and (3) fish, wildlife and endangered species throughout the upper and lower basins. These commitments are violations of the constitutional, civil, human and property rights of the Tribe; and

Endangered Species Guidance Specifically Excludes Consideration of Indian Water Rights in Missouri River Basin

WHEREAS, the Working Group on the Endangered Species Act and Indian Water Rights, Department of Interior, published recommendations for consideration of Indian water rights in Section 7 Consultation, in national guidance for undertakings such as the Master Manual, as follows:

The environmental baseline used in ESA Section 7 consultations on agency actions affecting riparian ecosystems should include for those consultations the full quantum of: (a) adjudicated (decreed) Indian water rights; (b) Indian water rights settlement act; and (c) Indian water rights otherwise partially or fully quantified by an act of Congress... Biological opinions on proposed or existing water projects that may affect the future exercise of senior water rights, including unadjudicated Indian water rights, should include a statement that project proponents assume the risk that the future development of senior water rights may result in a physical or legal shortage of water. Such shortage may be due to the operation of the priority system or the ESA. This statement should also clarify that the FWS can request reinstitution of consultation on junior water projects when an agency requests consultation on federal actions that may affect senior Indian water rights.

The Working Group recommendations further the failure to address unadjudicated Indian water rights. It is unthinkable that the United States would proceed with water resource activities, whether related to endangered species, water project implementation or Missouri River operation in the absence of properly considering Indian water rights that are not part of an existing decree – presuming, in effect, that the eventual quantification of Indian water rights will be so small as to have a minimal impact on the operation of facilities in a major river, such as the Missouri River, or so small as to be minimally impacted by assignment of significant flow to endangered species. The flows required to fulfill or satisfy Indian water rights are, in fact, not small nor minimal but are significant; and

Final Indian Water Right Agreements and Claims of the United States on Behalf of Tribes Are Denigrated by Master Manual and Other Regional Water Allocation Processes

WHEREAS, failures of federal policy to properly address Indian water rights in planning documents such as the Master Manual is underscored by example. Tribes in Montana

have water right compacts with the State that are complete and final but have not been incorporated into a decree. Incorporation is certain, however, and will be forthcoming. It is not a matter of "if", it is a matter of "when". The water rights agreed upon by compact are substantial, but neither the Corps of Engineers' Master Manual nor the Secretary of Interior's ESA guidance, as currently constituted, will consider these rights – they presume the rights do not exist – until they become part of a decree. At such time as the decree in Montana is complete, the Master Manual conclusions will be obsolete and any assignment of Missouri River flows to upstream reservoirs, downstream navigation or endangered species, relied upon by the various special interest groups, will be in conflict with the decree; and

WHEREAS, in Arizona, as another example, these same flawed federal policies to ignore Indian water rights in the allocation of regional water supplies are manifest. The United States is in the process of reallocating part of approximately 1.4 million acre-feet of water diverted from the Colorado River and carried by aqueduct system in the Central Arizona Project for the Phoenix area. The reallocation is purportedly for the purpose, in part, of resolving Indian water right claims in Arizona, but careful review of the reallocation demonstrates that only two Indian tribes are involved. The Bureau of Reclamation, agent for the trustee in the reallocation process, has given short shrift to other Indian concerns that the EIS should address the impacts of the reallocation on all affected tribes and on all non-Indian claimants that will be impacted by ongoing adjudication of Indian water rights. In response Reclamation describes claims filed by the Department of Justice on behalf of the tribes as *speculative*. Thus, Arizona tribes are in the same dilemma as Missouri River basin tribes, but the process to determine the magnitude of Indian claims in Arizona is much further advanced. The United States is, on the one hand, pursuing a claim for adjudication of Indian water rights; and the United States, on the other hand, is reallocating water necessary to supply non-Indian interests impacted by Indian water rights-- but is refusing to recognize any potential for Indian water rights success in ongoing adjudications. This denigrates the claims of the United States on behalf of the tribes and draws into question the intent and commitment of the Department of Justice in the proper advancement of Indian claims, claims which at least some tribes consider deficient and poorly prosecuted by the Department of Justice; and

WHEREAS, the Standing Rock Sioux Tribe cannot tolerate these policies: cannot permit reliance by wide and diverse interest groups in the Missouri River – states, environmental, federal agencies and economic sectors– on conclusions associated with the preferred alternative in the Master Manual when the conclusions are based on the presumption of no Indian water rights and insignificant future Indian water use throughout the Basin; cannot expect future courts to undo investments, undertakings, mortgages and economies that build on the basis of the Master Manual conclusions; cannot expect future Congresses to act more favorably than future courts; and

Importance of Master Manual Process is Underscored by Congressional and

Other Activity

WHEREAS, the Master Manual of the Corps of Engineers is the name presently given to the operating procedures for the mainstream dams and reservoirs. The Corps of Engineers has responsibility for those operations as directed by the 1944 Flood Control Act, the controlling legislation for the Pick-Sloan Project. Since 1944, all dams (except Fort Peck Dam) were constructed and have been operated by the Corps of Engineers or the Bureau of Reclamation. The current Master Manual revision is the first public process update of Corps of Engineers operating procedures, and its importance to future exercise of the Tribe's water rights cannot be ignored by the Tribe; and

WHEREAS, the Master Manual is intended by the federal courts and Congress to resolve issues between the upper and lower basin states, irrespective of tribal issues. The federal courts have dismissed cases brought by the states over the last decade and a half, cases designed to settle issues of maintenance of water levels in the reservoirs in North and South Dakota and the conflicting release of water for downstream navigation; and

WHEREAS, most recently, the Energy and Water Resource Development appropriations for FY 2001 were vetoed by the President because upstream senators supported by the President opposed language by downstream senators in the appropriations bill, which contained controversial language as follows:

Sec. 103. None of the funds made available in this Act may be used to revise the Missouri River Master Water Control Manual when it is made known to the Federal entity or official to which the funds are made available that such revision provides for an increase in the springtime water release program during the spring heavy rainfall and snow melt period in States that have rivers draining into the Missouri River below the Gavins Point Dam.

The provisions cited above require the Corps of Engineers or any other official to refrain from using any funds to revise the Master Manual if it is determined that the revision would cause any increase in water releases below Gavin's Point Dam in springtime. There is apparently concern by downstream members of Congress that the Master Manual will recommend an increase in releases to the detriment of downstream navigation, environmental values or flood control. Upstream members of Congress stopped the approval of appropriations over this controversy until the above-cited language was omitted from the bill; and

WHEREAS, given the importance of the Master Manual revision and update to the States, the Congress and Courts, the Standing Rock Sioux Tribe cannot tolerate the exclusion of proper consideration of their water rights, nor can the Tribe tolerate the inadequate representation of the Trustee on this matter; and

Brief Historical Review of Indian Water Rights

WHEREAS, the right of the Crown of Great Britain to the territory of North America was derived from the discovery of that continent by Sebastian Cabot, who in 1498 explored a greater part of the Atlantic Coast under a Commission from King Henry VII and took formal possession of the continent as he sailed along the coast. But those commissioned by the Crown to settle in North America were cognizant of the rights, titles and interests of the original possessors. In the proprietary of Maryland, granted to George Calvert, Lord Baltimore, in 1632, for example, it was recognized by English law evolving from invasions against the Celtic tribes and their successors by the Romans, Anglo-Saxons and Normans, among others, over a period of 1,500 years prior to the discovery of America that the rights of the ancient possessors were specific and could not be ignored by a just occupier. The following was the rationale:

The roving of the erratic tribes over wide extended deserts does not formed a possession which excludes the subsequent occupancy of Immigrants from countries overstocked with inhabitants. The paucity of their numbers in their mode of life, render them unable to fulfill the great purposes of the grant [by the King to the Proprietary of Maryland]. Consistent, therefore, with the great Charter to mankind, they (Tribes) may be confined within certain limits. Their rights to the privileges of man nevertheless continue the same: and the Colonists who conciliated the affections of the aborigines, and gave a consideration for their territory, have acquired the praise due to humanity and justice. Nations, with respect to the several communities of the earth, possessing all the rights of man, since they are aggregates of man, are governed by similar rules of action. Upon those principles was founded the right of emigration of old: upon those principles the Phenicians and Greeks and Carthagenians settled Colonies in the wilds of the earth.... In a work treating expressly of original titles to Land it has been thought not amiss to explain... the manner in which an individual obtaining from his Sovereign an exclusive licence, with his own means, to lead out and plant a Colony in a region of which that Sovereign had no possession, proceeded to avail himself of the privilege or grant, and to reconcile or subject to his views the people occupying and claiming by natural right that Country so bestowed... in particular, an history, already referred to, of the Americans settlements, written in 1671, after speaking of the acquisition of St. Marys continues 'and it hath been the general practice of his Lordship and those who were employed by him in the planting of the said province, rather to purchase the natives' interest... than to take from them by force that which they seem to call their right and inheritance, to the end all disputes might be removed touching the forcible encroachment upon others, against the Law of nature or nations... When the earth was the general property of mankind, mere occupancy conferred on the possessor such an interest as it would have been unjust, because contrary to the Law of Nature, to take from him without his consent: and this state has been happily compared to a theatre, common to all; but the individual, having appropriated a place, acquires a privilege of which he cannot be dispossessed without injustice'. ... the Grant [to Lord Baltimore] comprehended 'all Islands and Islets within the limits aforesaid, and all Islands and etc. within ten marine leagues of the Eastern Shore, with all Ports, Harbors, Bays, Rivers, and Straits, belonging to the region or Islands aforesaid, and all the soil, plains, woods, mountains, marshes, Lakes, Rivers, Days, and Straits, with the fishing of every kind, within the said limits; all mines of whatsoever kind, and patronage and advowson of all Churches. Lord Baltimore ... was invested with all the Rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, and Royal Rights and Temporal Franchises whatsoever, as well by sea as by land, within the Region, Islands, Islets, and limits aforesaid...' Source: John Kilty. Land Holders Assistant and Land Office Guide.

Islands, Islets, and Tracts aforesaid. [Source: John Kilty, *Land Holders Assistant and Land Office Guide*.

Baltimore: G. Dobbin & Murphy, 1808 (MSA SC 5165-1-1); and

WHEREAS, 130 years later the Proclamation of 1763 by King George III recognized title to the land and resources reserved by the American Indians of no lesser character or extent than the Charter to Lord Baltimore:

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds -- We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no... Governor or Commander in Chief In any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them. And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, ... all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid. And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purpose first obtained. And We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements. And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians: in order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where We have thought proper to allow Settlement: but that, if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie: and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose....

Given at our Court at St. James's the 7th Day of October 1763, in the Third Year of our Reign.

GOD SAVE THE KING: and

WHEREAS, after the American Revolution and consistent with the foregoing, the United States Supreme Court by 1832 relied upon the ancient concepts of its predecessor Great Britain and recognized the property rights of Indians in the classical case of *Worcester v. the State of Georgia*:

America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own and governing themselves by their own laws. It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered, which annulled the pre-existing rights of its ancient possessors. (6 P 515, p. 543)

... This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and making settlements on it. It was an exclusive principle which shut out the right of competition among those who had agreed to it; not one which could annul the previous rights of those who had not agreed to it. It regulated the right given by discovery among the European discoverers; but could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man....

... This soil was occupied by numerous and warlike nations, equally willing and able to defend their possessions. The extravagant and absurd idea, that the feeble settlements made on the sea-coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title which, according to the common law of European sovereigns respecting America, they might rightfully convey, and no more. This was the exclusive right of purchasing such lands as the natives were willing to sell. The Crown could not be understood to grant what the Crown did not effect to claim; nor was it so understood.

(6 P 515, p. 544-545) (Emphasis supplied); and

WHEREAS, the principles in the case of *Worcester v. Georgia* are ancient as shown above and are the foundation of the principles announced by the U. S. Supreme Court three quarters of a century later relating to the Yakima Indian Nation in the case of *United States v. Winans* (198 U.S. 371). Title of the Indians in their property rights was fully acknowledged, and the Treaty was interpreted as a grant of property to the United States in the area not reserved by the Tribe to itself.

The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not less necessary to the existence of the Indians than the atmosphere they breathed. New conditions came into existence, to which those rights had to be accommodated. Only a limitation of them, however, was necessary and intended, not a taking away. In other words the Treaty was not a grant of rights to the Indians, but a grant of rights from them - a reservation of those not granted.

(Emphasis supplied); and

WHEREAS, the Supreme Court case of *Henry Winters v. United States* (207 US 564) found that reservation of water for the purposes of civilization was implied in the establishment of the Reservations:

The Reservation was a part of a very much larger tract which the Indians had the right to occupy and use and which was adequate for the habits and wants of a nomadic and uncivilized people. It was the policy of the Government, it was the desire of the Indians, to change those habits and to become a pastoral and civilized people. If they should become such the original tract was too extensive, but a smaller tract would be adequate with a change of conditions. The lands were arid and, without irrigation, were practically valueless.

... That the Government did reserve them we have decided, and for a use which would be necessarily continued through years. This was done May 1, 1888, [at Fort Belknap] and it would be extreme to believe that within a year later [when the state of Montana was created] Congress destroyed the Reservation and took from the Indians the consideration of their grant, leaving them a barren waste - took from them the means of continuing their old habits, yet did not leave them the power to change to new ones. (207 U S 574, p. 576 577); and

WHEREAS, the case of *United States v. Ahtanum Irrigation District* (236 Fed 2nd 321, 1956) applied the *Worcester-Winans-Winters* concepts on Ahtanum Creek, tributary to the Yakima River and northern boundary of the Yakima Indian Reservation:

The record here shows that an award of sufficient water to irrigate the lands served by the Ahtanum Indian irrigation project system as contemplated in the year 1915 would take substantially all of the waters of Ahtanum Creek. It does not appear that the waters decreed to the Indians in the Winters case operated to exhaust the entire flow of the Milk River, but, if so, that is merely the consequence of it being a larger stream. As the Winters case, both here and in the Supreme Court, shows, the Indians were awarded the paramount right regardless of the quantity remaining for the use of white settlers. Our Conrad Inv. Co. Case, supra, held that what the non-Indian appropriators may have is only the excess over and above the amounts reserved for the Indians. It is plain that if the amount awarded the United States for the benefit of the Indians in the Winters Case equaled the entire flow of the Milk River, the decree would have been no different. (236 F. 2nd 321, p. 327) (Emphasis supplied); and

WHEREAS, these concepts were further advanced in *Arizona v California*, 373 U.S. 546, 596-601 (1963):

The Master found as a matter of fact and law that when the United States created these reservations or added to them, it reserved not only land but also the use of enough water from the Colorado [River] to irrigate the irrigable portions of the reserved lands. The aggregate quantity of water which the Master held was reserved for all the reservations is about 1,000,000 acre-feet to be used on around 135,000 irrigable acres of land....

It is impossible to believe that when Congress created the Great Colorado River Indian reservation and when the Executive Department of this Nation created the other reservations they were unaware that most of the lands were of desert kind -- hot scorching sands -- and the water from the River would be essential to the life of the Indian people and to the animals they hunted and crops they raised. We follow it [Winters] now and agree that the United States did reserve the water rights for the Indians effective as of the time Indian Reservations were created. This means, as the Master held, that these water rights, having vested before the Act [Boulder Canyon Project Act] became effective on June 25, 1929, are present perfected rights and as such are entitled to priority under the Act. We also agree with the Master's conclusion as to the quantity intended to be reserved. He found that water was intended to satisfy the future as well as present needs of the Indian reservations.... We have concluded, as did the Master, that the only feasible and fair way by which reserved water for the reservations can be measured is irrigable acreage. The various acreage of irrigable land which the Master found to be on the different reservations we find to be reasonable; and

General Nature of Attacks on Winter Doctrine

WHEREAS, notwithstanding the injunctions of Lord Baltimore, King George III and favorable decisions of the United States Supreme Court, in practice, Congress, the executive branch and the judiciary have (1) limited Indian reserved water rights, (2) suppressed development of Indian reserved water rights, and (3) permitted reliance by state, federal, environmental and private interests on Indian water, contrary to trust obligations. The federal policy has clearly been .. *how best to transfer Indian lands and resources to non-Indians..* rather than to preserve, protect, develop and utilize those resources for the benefits of the Indians.

With an opportunity to study the history of the Winters rule as it has stood now for nearly 50 years, we can readily perceive that the Secretary of the Interior, in acting as he did, improvidently bargained away extremely valuable rights belonging to the Indians.... viewing this contract as an improvident disposal of three quarters of that which justly belonged to the Indians, it cannot be said to be out of character with the sort of thing which Congress and the Department of the Interior has been doing throughout the sad history of the Government's dealings with the Indians and Indian tribes. That history largely supports the statement: From the very beginnings of this nation, the chief issue around which federal Indian policy has revolved has been, not how to assimilate the Indian nations whose lands we usurped, but how best to transfer Indian lands and resources to non-Indians. (United States v Ahtanum Irrigation District, 236 F. 2nd 321, 337); and

WHEREAS, the McCarran Amendment interpretation by the United States Supreme Court, if not in error, is a further example of the contemporary attack on Indian water rights. The discussion of the McCarran Amendment here is intended to show why tribes are (1) opposed to state court adjudications and (2) negotiated settlements under the threat of state court adjudication. In 1952 the McCarran Amendment, 43 U.S.C. 666 (a), was enacted as follows:

Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a River system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner or in the process of acquiring water rights by appropriation under State law, by purchase, by exchange or otherwise, and the United States is a necessary party to such suit; and

WHEREAS, the McCarran Amendment has been interpreted by the U.S. Supreme Court to require the adjudication of Indian water rights in state courts. *Arizona v San Carlos Apache Tribe*, 463 U.S. 545,564,573 (1981) held:

We are convinced that, whatever limitation the Enabling Acts or federal policy may have originally placed on State Court jurisdiction over Indian water rights, those limitations were removed by the McCarran Amendment.

In dissent, however, Justice Stevens stated:

To justify virtual abandonment of Indian water right claims to the State courts, the majority relies heavily on Colorado River Water Conservancy District, which in turn discovered an affirmative policy of federal judicial application in the McCarran Amendment. I continue to believe that Colorado River read more into that amendment than Congress intended... Today, however, on the tenuous foundation of a perceived Congressional intent that has never been articulated in statutory language or legislative history, the Court carves out a further exception to the virtually unflagging obligation of Federal courts to exercise their jurisdiction. The Court does not -- and cannot -- claim that it is faithfully following general principles of law... That Amendment is a waiver, not a command. It permits the United States to be joined as a defendant in state water rights adjudications; it does not purport to diminish the United States right to litigate in a federal forum and it is totally silent on the subject of Indian tribes rights to litigate anywhere. Yet today the majority somehow concludes that it commands the Federal Courts to defer to State Court water right proceedings, even when Indian water rights are involved; and

WHEREAS, in Arizona, Montana and other states, general water right adjudications to quantify *Winters* Doctrine rights are ongoing. For example in the state of Montana:

- (1) the state of Montana sued all tribes in a McCarran Amendment proceeding.
- (2) the State of Montana established a Reserved Water Rights Compact Commission. The purpose of the Commission was to negotiate the *Winters* Doctrine rights of the Montana tribes.
- (3) the Department of Interior has adopted a negotiation policy for the settlement of Indian water rights. The United States Department of Interior has a negotiating team which works with the Montana Reserve Water Rights Compact Commission and Indian tribes, some forced by the adjudication in

state court, to negotiate, while others are willing to negotiate.

(4) the Department of Interior makes all necessary funding available to any Tribe willing to undertake negotiations. A Tribe refusing to negotiate cannot obtain funding to protect and preserve its *Winters* Doctrine water rights.

(5) upon reaching agreement between the State of Montana and an Indian tribe, congressional staff are assigned to develop legislation in the form of an Indian water rights settlement that may or may not involve authorization of federal appropriations to develop parts of the amount of Indian water agreed upon between the Tribe and the State or for other purposes.

(6) in the absence of the desire of a Tribe to negotiate, the State of Montana will proceed to prosecute its McCarran Amendment case against the Tribe; and

WHEREAS, this process relies on ongoing litigation to accomplish negotiated settlements of *Winters* Doctrine Indian water rights. The process is held out to be a success by the state and federal governments. However, comparison with the taking of the Black Hills from the Great Sioux Nation, the taking of the Little Rocky Mountains from the Fort Belknap Indian Reservation and the taking of Glacier Park from the Blackfeet are valid comparisons. There are elements of force and extortion in the process; and

WHEREAS, in the Wind River adjudication, 753 P. 2nd 76, 94-100 (WY 1988), the State of Wyoming utilized the McCarran Amendment to drastically diminished the Arapaho and Shoshone *Winters* Doctrine water rights in the Big Horn River Basin. The Wyoming Supreme Court found as follows:

The quantity of water reserved is the amount of water sufficient to fulfill the purpose of the lands set aside for the Reservation.

The Court, while recognizing that the tribes were the beneficial owners of the reservations timber and mineral resources... and that it was known to all before the treaty was signed that the Wind River Indian Reservation contained valuable minerals; nonetheless concluded that the purpose of the reservation was agricultural. The fact that the Indians fully intended to continue to hunt and fish does not alter that conclusion.... The evidence is not sufficient to imply a fishery flow right absent a treaty provision.... The fact that the tribes have since used water for mineral and industrial purposes does not establish that water was impliedly reserved in 1868 for such uses. The District Court did not err in denying a reserved water right for mineral and industrial uses... the District Court did not err in holding that the Tribes and the United States did not introduce sufficient evidence of a tradition of wildlife and aesthetic preservation that would justify finding this to be a purpose for which the Reservation was created or for which water was impliedly reserved... not a single case applying the

reserved water right doctrine to groundwater is cited to us.... In Colville Confederated Tribes v. Walton, supra, 547 F 2d 42, there is slight mention of the groundwater aquifer and of pumping wells, Id at 52, but the opinion does not indicate that the wells are a source of reserved water or even discuss a reserve groundwater right.... The District Court did not err in deciding there was no reserved groundwater right; and

WHEREAS, the statement by the Wyoming Supreme Court that *Colville* does not discuss a reserved water right to groundwater is in error, for Colville did decree reserved groundwater rights; and

WHEREAS, the *Wind River* case must be carefully examined by all tribes, including those of the Missouri River Basin. The single purpose of the Wind River Indian Reservation recognized by the Wyoming Supreme Court was limited to agriculture: severely limited relative to the... *Rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, and Royal Rights and Temporal Franchises whatsoever, ... within the Region, ..comprehending... 'all the soil, plains, woods, mountains, marshes, Lakes, Rivers, Days, and Straits, with the fishing of every kind, within the said limits'; all mines of whatsoever kind...* received by from the King by Lord Baltimore in the Proprietary of Maryland, which were, nevertheless, subject to purchase from the Native possessors. The Arapaho and Shoshone must have believed that the purpose of the reservation was to provide a permanent home and abiding place for their present and future generations to engage and pursue a viable economy and society. Despite existing oil and gas resources, they were denied reserved water for mineral purposes. Despite the need for industry in a viable economy, they were denied reserved water for industry. Despite a tradition of hunting and fishing, they were denied reserved water for wildlife and aesthetic preservation. Despite the existence of valuable forests, they were denied reserved water for this purpose. Despite the existence of valuable fisheries, established from time immemorial, they were denied a reserved water right to sustain their fisheries; and

WHEREAS, the United States Supreme Court reviewed the *Wind River* decision on the following question:

In the absence of any demonstrated necessity for additional water to fulfill reservation purposes and in presence of substantial state water rights long in use on the reservation, may reserved water rights be implied for all practicably irrigable lands within reservation set aside for specific Tribe? 57 LW 3267 (Oct. 11, 1988); and

WHEREAS, acting without a written opinion and deciding by tie vote, the United States Supreme Court affirmed the decision of the Supreme Court of the State of Wyoming and rejected the thought process presented in the question above that the Tribes needed no additional water than the amount they were using and that state created water rights with long use should not be subjected to future Indian water rights. But a change in vote by a single justice would have reversed the decision and severely

constricted the benefits of the *Winters* Doctrine to the Indian people, a subject to be discussed further. The decision is limited to the State of Wyoming on critical issues, namely that Indian reserved rights do not apply to groundwater; the absence of a reserved water right for forest and mineral purposes; the absence of a reserved water right for fish, wildlife and aesthetic preservation; and a reduction of the Tribes claims to irrigation from 490,000 to less than 50,000 acres; and

WHEREAS, the acreage for irrigation finally awarded to the Wind River Tribes for future purposes was 48,097 acres involving approximately 188,000 acre-feet of water annually:

In determining the Tribes claims to practicably irrigable acreage, the United States [trustee for the tribes] began with an arable land-base of approximately 490,000 and relied on its experts to arrive at over 88,000 practicably irrigable acres. The claim was further "trimmed" by the United States to 76,027 acres for final projects. The acreage was further reduced during trial to 53,760 acres by Federal experts with a total annual diversion requirement of about 210,000 acre-feet. (Teno Roncalio, Special Master. In Re: The General Adjudication of All Rights to the Use of Water in the Big Horn River System and All Other Sources, State of Wyoming, Concerning Reserved Water Right Claims by and on Behalf of the Tribes of the Wind River Indian Reservation, Wyoming, Dec. 15, 1982, pp. 154 and 157); and

WHEREAS, the *purposes* of reservation issue addressed by the Wyoming courts evolved from the 1978 United States Supreme Court case, *United States v. New Mexico* (438 U.S. 696), involving the water rights of the Gila National Forest:

The Court has previously concluded that Congress, in giving the President the power to reserve portions of the federal domain for specific federal purposes, impliedly authorized him to reserve "appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation."... The Court has repeatedly emphasized that Congress reserved "only that amount of water necessary to fulfill the purpose of the reservation, no more."... Where water is only valuable for a secondary use of the reservation, however, there arises the contrary inference that Congress intended, consistent with its other views, that the United States would acquire water in the same manner as any other public or private appropriator.... The legislative debates surrounding the Organic Administration Act of 1897 and its predecessor bills demonstrate that Congress intended national forests to be reserved for only two purposes -- "to conserve the water flows, and to furnish a continuous supply of timber for the people."... Not only is the Government's claim that Congress intended to reserve water for recreation and wildlife preservation inconsistent with Congress's failure to recognize these goals as purposes of the national forest, it would defeat the very purpose for which Congress did intend the national forest system.... While Congress intended the national forest to be put to a variety of uses, including stockwatering, not inconsistent with the two principal purposes of the forest, stock watering was not, itself, a direct purpose of reserving the land; and

WHEREAS, there may be debate with respect to the purposes for which a national

forest was created and for which purposes water was reserved, but it is a "slender reed" upon which to found a debate that when Indian reservations were established by the Indians or Great Britain or the United States, the purpose of establishment might vary among the Indian reservations; and, depending upon that purpose, the Indians would be limited in the beneficial uses to which water could be applied. Indian neighbors could apply water to any beneficial purpose generally accepted throughout the Western United States, but Indians could not. It is inconceivable that an Indian Reservation was established for any other "purpose" than an "Indian" reservation or that each Reservation was established for some arcane reason other than the pursuits of industry, self-government and all other activities associated with a modern, contemporary and ever-changing society embracing all of the ... *Rights, Jurisdictions, Privileges, Prerogatives, ... and Temporal Franchises whatsoever, ... within the Region, ..comprehending... 'all the soil, plains, woods, mountains, marshes, Lakes, Rivers, Days, and Straits, with the fishing of every kind, within the said limits; all mines of whatsoever kind, and*

WHEREAS, nevertheless, the Wyoming courts relied upon the "purposes" argument to exclude water reserved for the pursuit of many of the arts of civilization.... industry, mineral development, fish, wildlife, aesthetics... on the basis that the purpose of the Wind River Indian Reservation was limited to an agricultural purpose absent specific Treaty language to the contrary. As crude as this conclusion may be, however, Tribes of the Missouri River basin and throughout the Western United States are faced with the "purposes" limitation originally applied in 1978 to national forests; and

WHEREAS, if there may be a question that the issue ended in Wyoming, it is only necessary to examine the state court general adjudication process in Arizona. A June 2000 pretrial order by the Special Master in the *General Adjudication of All Rights to Use Water in the Gila River System and Source* summarizes the issues as follows:

... Does the "primary-secondary" purposes distinction, as announced by the U.S. Supreme Court in United States v. New Mexico, 438 U.S. 696 (1978), apply to the water rights claimed for the Gila River Indian Reservation?...

.... The State Litigants takes the position that the distinction does apply.

... if the "primary-secondary" purposes distinction does apply to the Gila River Indian Reservation, what were the primary and secondary purposes for each withdrawal or designation of land for the Gila River Indian Reservation? May the Reservation have more than one "primary" purpose?....

.... The State Litigants takes a position that the federal government withdraw or designated land to protect existing agriculture, create a buffer between the community and non-Indians who were settling in the area, provide substitute agricultural lands when non-Indians encroached on existing Indian agricultural lands, and provide for other specific economic activities such as grazing; and

WHEREAS, the restriction or limitation of Indian water rights in the Missouri River basin is not confined to a federal denial of them in federal actions, such as the Master Manual and endangered species consultation. The limitations are expected to grow and expand from these federal actions. Indian water right opponents will concentrate on the language of *United States v. New Mexico* that "...only that amount of water necessary to fulfill the purpose of the reservation, no more..." has been reserved by the Tribes or the United States on behalf of the tribes. The effort will be to first limit the purposes for which an Indian reservation was established and second limit the amount of water necessary to fulfill that purpose. If, for example, opponents could successfully argue that the purpose of an Indian reservation in the Missouri River Basin was primarily a "permanent homeland" and that agriculture was secondary, they would further argue that the amount of water reserved was limited to domestic uses, and no water was reserved for irrigation; and

WHEREAS, *Cappaert v. United States* (426 U.S. 128, 1976) was the basis, in part, for the decision in *United States v. New Mexico* discussed above. Here again the purposes of a "federal" reservation (as distinguished from a reservation by Indians or a reservation by the United States on behalf of Indians) and the use of water for that purpose is the subject. But the Cappaert decision is helpful in showing the extreme interpretations to which the State Court in Wyoming went in its *Wind River* decision:

....The District Court then held that, in establishing Devil's Hole as a national monument, the President reserved appurtenant, unappropriated waters necessary to the purpose of the reservation; the purpose included preservation of the pool and pupfish in it.... The Court of Appeals for the Ninth Circuit affirmed... holding that the "implied reservation of water" doctrine applied to groundwater as well as surface water...and

WHEREAS, the purpose of establishing the national monument was clearly limited -- to preserve the Devil's Hole pupfish, which rely on a pool of water that is a remnant of the prehistoric Death Valley Lake System an object of historic and scientific interest. This is not an Indian reservation which embraces all of the purposes related to civilization, society and economy. Yet, Wyoming seized on the concept of an Indian reservation with purpose limited in the same manner as a national forest or a national monument. Note, however, that the Wyoming case (1988) grasps at the purposes argument to diminish the Indian water right but ignores the damaging aspect of *Cappaert* (1976) that reserved water concepts apply to groundwater as well as surface water. Not only did Wyoming ignore *Colville Confederated Tribes*, it ignored *Cappaert*. Recently, the Arizona Supreme Court, after considering the Wyoming decision, could not countenance a similar decision in Arizona, specifically rejected the Wyoming decision and found as follows:

...the trial court correctly determined that the federal reserved water rights doctrine applies not only to surface water but to groundwater...and...holders of federal reserved rights enjoy greater protection from groundwater pumping than do holders of state law rights...; and

WHEREAS, similarly, Wyoming ignored *Cappaert*, a U.S. Supreme Court decision about federally reserved water rights in a National Monument in Nevada, where *Cappaert* specifically rejected the concept of "sensitivity" or balancing of equities when water is needed for the purpose of a federal or Indian Reservation. In *Cappaert* the Court cited the *Winters* decision as a basis for rejecting the notion of Nevada that competing interests must be balanced between federal (or Indian) reserved water rights and competing non-federal (or non-Indian) water rights. Wyoming returned to the U.S. Supreme Court seeking a more favorable decision respecting "sensitivity" than provided by *Cappaert*.

Nevada argues that the cases establishing the doctrine of federally reserved water rights articulate an equitable doctrine calling for a balancing of competing interests. However, an examination of those cases shows they do not analyze the doctrine in terms of a balancing test. For example, in Winters v. United States, supra, the Court did not mention the use made of the water by the upstream landowners in sustaining an injunction barring their diversions of the water. The "Statement of the Case" in Winters notes that the upstream users were homesteaders who had invested heavily in dams to divert the water to irrigate their land, not an unimportant interest. The Court held that, when the Federal Government reserves land, by implication, it reserves water rights sufficient to accomplish the purposes of the reservation; and

WHEREAS, the United States Supreme Court reviewed the decision of the Wyoming Supreme Court and upheld the decision by a tie vote as discussed above. However, the majority of the court had apparently been swayed by the Wyoming argument:.... *In the absence of any demonstrated necessity for additional water to fulfill reservation purposes and in presence of substantial state water rights long in use on the reservation, may reserved water rights be implied for all practicably irrigable lands within reservation set aside for specific Tribe?... and had prepared a draft opinion referred to by the Arizona Supreme Court as the "ghost" opinion. The draft opinion was apparently not issued because Justice Sandra Day O'Connor, author of the "ghost" opinion on behalf of the majority, disqualified herself because she learned that her ranch had been named as a defendant in the Gila River adjudication in Arizona. Despite more than 350 years of understanding of justice and law relating to Indian property, the O'Connor opinion would have destroyed the basic tenets of the Winters Doctrine:*

...The PIA standard is not without defects. It is necessarily tied to the character of land, and not to the current needs of Indians living on reservations....And because it looks to the future, the PIA standard, as it has been applied here, can provide the Tribes with more water than they need at the time of the quantification, to the

detriment of non-Indian appropriators asserting water rights under state law....this Court, however, has never determined the specific attributes of reserve water rights – whether such rights are subject to forfeiture for nonuse or whether they may be sold or leased for use on or off the Reservation....Despite these flaws and uncertainties, we decline Wyoming's invitation to discard the PIA standard... The PIA standard provides some measure of predictability and, as explained hereafter, is based on objective factors which are familiar to courts. Moreover no other standard that has been suggested would prove as workable as the PIA standard for determining reserve water rights for agricultural reservations....we think Master Roncolio and the Wyoming Supreme Court properly identified three factors that must be considered in determining whether lands which have never been irrigated should be included as PIA: the arability of the lands, the engineering feasibility (based on current technology) of necessary future irrigation projects, and the economic feasibility of such projects (based on the profits from cultivation of future lands and the costs of the project.. Master Roncolio found...that economic feasibility will turn on whether the land can be irrigated with a benefit-cost ratio of one or better....Wyoming argues that our post-Arizona cases, specifically Cappaert and New Mexico, indicate that quantification of Indian reserved water rights must entail sensitivity to the impact on state and private appropriators of scarce water under state law.... Sensitivity to the Impact on prior appropriators necessarily means that "there has to be some degree of pragmatism" in determining PIA....we think this pragmatism involves a "practical" assessment – a determination apart from the theoretical economic and engineering feasibility – of the reasonable likelihood that future irrigation projects, necessary to enable lands which have never been irrigated to obtain water, will actually be built....no court has held that the Government is under a general legal or fiduciary obligation to build or fund irrigation projects on Indian reservations so that irrigable acreage can be effectively used..... massive capital outlays are required to fund irrigation projects...and in today's era of budget deficits and excess agricultural production, government officials have to choose carefully what projects to fund in the West. ... Thus, the trier of fact must examine the evidence, if any, that additional cultivated acreage is needed to supply food or fiber to resident tribal members, or to meet the realistic needs of tribal members to expand their existing farming operations. The trier must also determine whether there will be a sufficient market for, or economically productive use of, any crops that would be grown on the additional acreage....we therefore vacate the judgment insofar as it relates to the award of reserved water rights for future lands and remand the case to the Wyoming Supreme Court for proceedings not inconsistent with this opinion; and

WHEREAS, the United States Supreme Court has virtually unlimited power to arrive at unjust decisions as evidenced by the *Dred Scott* decision, and the opinion of the minority would have had no force and effect in *Wyoming* as given by Justice Brennan:

...in the Court might well have taken as its motto for this case in the words of Matthew 25:29: "but from him that has not shall be taken away even that which he has." When the Indian tribes of this country were placed on reservations, there was, we have held, sufficient water reserved for them to fulfill the purposes of the reservations. In most cases this has meant water to irrigate their arable lands.... The Court now proposes, in effect, to penalize them for the lack of Government investment on their reservations by taking from them those water rights that have remained theirs, until now, on paper. The requirement that the tribes demonstrate a "reasonable likelihood" that irrigation

projects already determined to be economically feasible will actually be built – gratuitously superimposed, in the name of “sensitivity” to the interests of those who compete with the Indians for water, upon a workable method for calculating practicably irrigable acreage that parallels government methods for determining the feasibility of water projects for the benefit of non-Indians – has no basis in law or justice; and

WHEREAS, whether inspired by the “ghost” opinion of Justice O’Connor or not, the Arizona Supreme Court held arguments in February 2001 on the issue of: “what is the appropriate standard to be applied in determining the amount of water reserved for federal lands?”, particularly Indian lands, which were not reserved by the United States for the Standing Rock Sioux Tribe but were, rather, reserved by the Tribe by its ancient ancestors from time immemorial. The outcome by the Arizona Supreme Court is immaterial but provides the question for review by the United States Supreme Court with full knowledge from the “ghost” opinion of the probable outcome. The Salt River Project and Arizona, principal losers in *Arizona v California I*, make the following arguments in *Gila River* against Indian reserved rights to the use of water:

...Under the United States Supreme Court’s decision in United States v New Mexico..., all federal land with a dedicated federal purpose “has reserved to it that minimum amount of water which is necessary to effectuate the primary purpose of the land set aside.” Judge Goodfarb also found, however, that this “purposes” test does not apply to Indian reservations. Instead, he held that, for Indian reservations, “the courts have drawn a clear and distinct line”....that mandates that reserved rights for all Indian reservations must be quantified based on the amount of “water necessary to irrigate all of the practicably irrigable acreage (PIA) on that Reservation” without considering the specific purposes for which the Reservation was created....this interlocutory proceeding with respect to Issue 3 arose because Judge Goodfarb incorrectly ruled (as a matter of law and without the benefit of any factual record, briefing, or argument) that PIA applies to all Indian reservations...

....as shown below, the Supreme Court in that case [Arizona I] and the courts in all reported decisions since that time, have applied the following analysis: first, review the historical evidence relating to the establishment of the Reservation and, from that evidence, determine the purposes for which the specific land in question was reserved (a question of fact). Second, determine, based upon the evidence, the minimum quantity of water necessary to carry out those purposes (a mixed question of law and fact). ...and in Colville Confederated Tribes V. Walton, for instance, the ninth circuit stated: “to identify the purposes for which the Colville Reservation was created, we consider the document and circumstances surrounding its creation, and the history of the Indians for whom it was created. We also consider their need to maintain themselves under changed circumstances.”

...the Zuni Reservation in northeastern Arizona, for example, was established

by Congress expressly "for religious purposes."...the original 1859 creation of the Gila Reservation and each of the seven subsequent additions had different rationales and were intended to address different purposes or combinations of purposes (e.g. protecting existing farmlands, adding lands for grazing, including lands irrigated by Indians outside the Reservation as part of the Reservation...

...in addition to varying in size, Indian reservations also vary in location and terrain. Reservations in Arizona, for instance, run the gamut from desert low lands to the high mountains and everything in between. Certain reservations along the Colorado River include fertile but arid river bottom land and were created for the purpose of converting diverse groups of "nomadic" Indians to a "civilized" and agrarian way of life...other reservations, such as the Navajo Reservation in extreme northeastern Arizona, consist largely of "very high plateaus, flat-top mesas, inaccessible buttes and deep canyons."....there can be little doubt that the PIA standard works to the advantage of tribes inhabiting alluvium plains or other relatively flat lands adjacent to stream courses. In contrast, tribes inhabiting mountainous or other agriculturally marginal terrains are at a severe disadvantage when it comes to demonstrating that their lands are practicably irrigable....

...the special master (Arizona I) conducted a trial, accepted and reviewed substantial evidence regarding the purposes of the five Indian reservations at issue in that case, made factual findings as to purposes, and only then found that the minimum amount of water necessary to carry out those purposes was best determined by the amount of water necessary to irrigate all "practicably irrigable" acres on those reservations.....the special master stated: "moreover the 'practicably irrigable' standard is not necessarily a standard to be used in all cases and when it is used it may not have the exact meaning it holds in this case. The amount reserved in each case is the amount required to make each Reservation livable."

...although the United States Supreme Court affirmed the Wyoming court's decision in that case without opinion, events surrounding that review shed considerable light on the Supreme Court's concerns about the continued viability of PIA as a standard, at least in the form it was applied in Arizona I.several Justices challenged the United States's defense of PIA.... "at this point, Chief Justice Rehnquist challenged the precedential validity of Arizona I by noting that the opinion 'contains virtually no reasoning' and the Court merely had accepted the special master's conclusion as to the PIA standard...arguing that Congress must of contemplated the size of the tribe that would live on the Wind River Reservation, ...the Chief Justice stated that he found it difficult to believe that 'in 1868 Congress...should be deemed have said we're giving up water to irrigate every - every inch of arable land. No matter how large the tribe they thought they were settling. Did they expect to make some tribes very rich so that they can have an enormous export business... in agricultural products?" (State Litigant's Opening Brief on

Interlocutory Issue 3, Gila River Adjudication); and

Historical Analysis of Thought Processes Embraced by Master Manual

WHEREAS, the means employed by the Corps of Engineers to deny consideration of Indian water rights in the preparation of the Master Manual and those same means employed by the Department of Interior to deny consideration of Indian water rights in baseline environmental studies of endangered species have been presented. Also, presented was the favorable body of law supporting the proper consideration of Indian water rights followed by the denigration of that law in state court adjudications, namely in Wyoming and, more recently, in Arizona. Briefly examined here are historical examples of the diminishment of property rights by a superior force and the strikingly similar arguments in support of that diminishment, and

WHEREAS, the concepts and techniques for diminishing the water rights of the Standing Rock Sioux Tribe in the Missouri River, its tributaries and aquifers are not novel. The colonization of Ireland by the English (*circa* 1650), for example, was justified in a manner that provides insight in the federal treatment of Indian water rights in the Missouri River Basin. Sir Thomas Macaulay, a prominent English politician in the first half of the 19th-century and one of the greatest writers of his or any other era, rationalized the taking of land from the native Irish and the overthrow of King James II in 1692, which overthrow was due, in part, to the King's efforts to restore land titles to the native Irish: (Sir Thomas Macaulay, 1848, *The History of England*, Penguin Classics, pp 149-151)

To allay national animosity such as that which the two races (Irish and English) inhabiting Ireland felt for each other could not be the work of a few years. Yet it was a work to which a wise and good Prince might have contributed much; and King James II would have undertaken that work with advantages such as none of his predecessors or successors possessed. At once an Englishman and a Roman Catholic, he belonged half to the ruling and half to the subject cast, and was therefore peculiarly qualified to be a mediator between them. Nor is it difficult to trace the course which he ought to have pursued. He ought to have determined that the existing settlement of landed property should be inviolable; and he ought to have announced that determination in such a manner as effectually to quiet the anxiety of the new proprietors, and to extinguish any wild hopes which the old proprietors might entertain. Whether, in the great transfer of estates, injustice had or had not been committed, was immaterial. The transfer, just or unjust, had taken place so long ago, that to reverse it would be to unfix the foundations of society. There must be a time limitation to all rights. After thirty-five years of actual possession, after twenty-five years of possession solemnly guaranteed by statute, after innumerable leases and releases, mortgages and devises, it was too late to search for flaws in titles. Nevertheless something might have been done to heal the lacerated feelings and to raise the fallen fortunes of the Irish gentry. The colonists were in a thriving condition. They had greatly improved their property by building, planting and fencing.... There was no doubt that the next Parliament which should meet at Dublin, though representing almost exclusively the English interest, would, in return for the King's promise to maintain that interest in all its legal rights, willingly grant to him a considerable sum for the purpose of indemnifying, at

least in part, such native families as had been wrongfully despoiled.

Having done this, he should have labored to reconcile the hostile races to each other by impartially protecting the rights and restraining the excesses of both. He should have punished with equal severity that native who indulges in the license of barbarism and the colonists who abused the strength of civilization..... no man who was qualified for office by integrity and ability should have been considered as disqualified by extraction or by creed for any public trust. It is probable that a Roman Catholic King, with an ample revenue absolutely at his disposal, would, without much difficulty, have secured the cooperation of the Roman Catholic prelates and priests in the great work of reconciliation. Much, however, might still have been left to the healing influence of time. The native race might still have had to learn from the colonists industry and forethought, arts of life, and the language of England. There could not be equality between men who lived in houses and men who lived in sties, between men who were fed on bread and men who were fed on potatoes, between men who spoke the noble tongue of great philosophers and poets and men who, with the perverted pride, boasted that they could not withe their mouths into chattering such a jargon as that in which the Advancement of Learning and the Paradise Lost were written. Yet it is not unreasonable to believe that if the gentle policy which has been described had been steadily followed by the government, all distinctions would gradually have been effaced, and that there would now have been no more trace of the hostility which has been the curse of Ireland ...and

WHEREAS, the Master Manual rationale... *Currently, such reserved or aboriginal rights of tribal reservations have not been quantified in an appropriate legal forum or by compact with three exceptions... The Study considered only existing consumptive uses and depletions; therefore, no potential tribal water rights were considered... or the ESA rationale.... The environmental baseline used in ESA Section 7 consultations on agency actions affecting riparian ecosystems should include for those consultations the full quantum of: (a) adjudicated (decreed) Indian water rights; (b) Indian water rights settlement act; and (c) Indian water rights otherwise partially or fully quantified by an act of Congress... Biological opinions on proposed or existing water projects that may affect the future exercise of senior water rights, including unadjudicated Indian water rights, should include a statement that project proponents assume the risk that the future development of senior water rights may result in a physical or legal shortage of water....* does not represent a significant step forward from that advanced by Macaulay given the opportunity of 150 years for refinement in America. There cannot be significant differences between the statement of the Corps of Engineers and the Macaulay logic; and

WHEREAS, it is material, not immaterial, whether there has been injustice or a fitting of the law to the purpose in the transfer of Standing Rock waters of the Missouri River, its tributaries and its aquifers to non-Indians in the Master Manual update. It is rejected as correct ... that after the new proprietor's (downstream navigation, upstream recreation and endangered species) have enjoyed the Indian "estate" for a period of 25 to 35 years, the wild hopes of the Indian proprietors for participation must be extinguished. It is rejected as correct that the lacerated Indian feelings be healed, or for a considerable sum, despoiled Indian families can be made whole and the new possessors of Standing Rock Sioux water rights can be indemnified. It is rejected as proper that this be justified on the basis that the new possessor has greater industry, forethought, arts of life, language, diet, and housing. It is rejected

as untrue that after numerous leases, releases, and mortgages by non-Indians relying upon unused Indian *Winters* doctrine water rights, it is too late to search for flaws in titles. It is accepted as true that the Master Manual promotes reliance by non-Indians upon unused Indian *Winters* doctrine water rights; and

WHEREAS, the rationale of Supreme Court Justices, Master Manual and ESA is but a limited improvement from historical examples even earlier than Macaulay. Over 400 years ago, the sovereigns of England and Scotland, upon their union, sought possession of the borderlands between the two nations and to dispossess the native tribal inhabitants. The following provides the rationale of the Bishop of Glasgow against those ancient inhabitants as they sought (in vain) to stay in possession of their ancient lands:

I denounce, proclaim and declare all and sundry acts of the said murders, slaughters, ... thefts and spoils openly upon daylight and under silence of night, all within temporal lands as Kirklands; together with their partakers, assistants, suppliers, known receivers and their persons, the goods reft and stolen by them, art or part thereof, and their counselors and defenders of their evill deeds generally CURSED, execrated, aggregate and re-aggregate with the GREAT CURSING.

I curse their head and all their hairs on their head; I curse their face, their eye, their mouth, their nose, their tongue, their teeth, their crag, their shoulders, their breast, their heart, their stomach, their back, their warme (belly); their arms, their legs, their hands, their feet, and every part of their body, from the top of their head to the sole of their feet, before and behind, within and without.

I curse them going and I curse them are riding; I curse them standing, and I curse them sitting; I curse them eating, I curse them drinking; I curse them walking, I curse them sleeping; I curse them arising, I curse them laying; I curse them at home, I curse them from home; I curse them within the house, I curse them without the house; I curse their wives, their barns, and their servants participating with them in their deeds. I wary their corn, their cattle, their wool, their sheep, their horses, their swine, their geese, their hens, and all their livestock. I wary their halls, their chambers, their kitchens, their storage bins, their barns, their cowsheds, their barnyards, their cabbage patches, their plows, their harrows, and the goods and houses that is necessary for their sustenance and welfare.

The malediction of God that lighted upon Lucifer and all his fellows, that struck them from the high heaven to the deep hell, must light upon them. The fire in the sword that stopped Adam from the gates of Paradise, must stop them from the glory of heaven until they forbear and make amends; AND

WHEREAS, truly, the rationale of the Master Manual may be a slight improvement in the techniques that were used to justify dispossession 400 years ago and represents progress. Standing Rock and other tribes have repeatedly encountered equally effective, if less colorful, opposition to their efforts to preserve, protect, administer and utilize their water rights; and

WHEREAS, the distinguishing feature for the Standing Rock Sioux Tribe, however, is

the fact that the water right "estate" in the Missouri River has not been taken from them, even though it is under attack in the Master Manual. It is proposed in the Master Manual to commit water away from the Indians, but the process is not accomplished, and those who would rely on unused Indian water rights have not yet taken possession and executed mortgages, leases and releases on the basis of them. The Standing Rock Sioux Tribe remain in position to retain its "estate" in the Missouri River by rejecting the Master Manual and taking affirmative action to protect its ancient and intact possessions; and

WHEREAS, by taking steps to protect their ancient possessions the Standing Rock Sioux Tribe recognizes that it cannot expect support from the United States or its agencies acting as Trustee. Strong reaction can be expected from any current attempt to do so, including strong reaction by the Trustee. First, the Trustee has no funds for litigation of Indian water right issues. Second, the Trustee has considerable funds for settlement of Indian water right issues, but the Indian costs in lost property are great. Third, the Trustee has considerable technical criteria and requirements to impose on the Indian tribes as a basis for limiting the Indian water right "estate": irrigable land criteria, water requirement criteria, limitation on beneficial uses and, most limiting, economic feasibility criteria that few, if any, existing non-Indian water projects could survive.

NOW THEREFORE BE IT RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe rejects the Master Manual Review and Update by the U. S. Army Corps of Engineers for the express reason that it establishes a plan for future operation of the Missouri River addressing inferior downstream navigation, upstream recreation and endangered species water claims of the States and Federal interests and specifically denies proper consideration or any consideration of the superior, vested water rights of the Standing Rock Sioux Tribe while committing reservoir releases to purposes and interests in direct opposition to those of the Tribe.

BE IT FURTHER RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe, seeking to protect and preserve its valuable rights to the use of water in the Missouri River, its tributaries and aquifers upon which the Tribe relies and has relied since ancient times for its present and future generations, directs the Chairman to take all reasonable steps, through the appointment of himself, Tribal Council members and staff to working groups to petition members of Congress and officials at the highest levels in the Bush Administration, including the Department of Justice, among other proper steps, for the single purpose of ensuring a full rejection and re-constitution of the Master Manual as now proposed for action by the Corps to properly reflect the rights, titles and interests of the Standing Rock Sioux Tribe.

BE IT FURTHER RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe proclaims its continued dominion over all of the lands within the boundaries of the Standing Rock Sioux Indian Reservation as reserved from time immemorial including

but not limited to rights, jurisdictions, privileges, prerogatives, liberties, immunities, and temporal franchises whatsoever to all the soil, plains, woods, wetlands, lakes, rivers, aquifers, with the fish and wildlife of every kind, and all mines of whatsoever kind within the said limits; and the Tribal Council declares its water rights to irrigate not less than 303,650 arable acres with an annual diversion duty of 4 acre feet per acre, to supply municipalities, commercial and industrial purposes and rural homes with water for not less than 30,000 future persons having an annual water requirement of 10,000 acre feet annually, to supply 50,000 head of livestock of every kind on the ranges having an annual water requirement of 1,500 acre feet annually: such proclamation made on the basis of the status of knowledge at the start of the third millennia and subject to change to include water for other purposes, such as oil, gas, coal or other minerals, forests, recreation, and etc; and such proclamation for the purposes and amount of water required to be adjustable in the future to better reflect improved knowledge and changing conditions.

BE IT FURTHER RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe directs the Chairman to take all reasonable steps, through the appointment of himself, Tribal Council members and staff to working groups to petition members of Congress and officials at the highest levels in the Bush Administration to support and promote legislation that would, among other things, enable the Standing Rock Sioux Tribe to exercise its rights to the use of water in the Missouri River, in part, by purchasing the generators and transmission facilities of the United States at Oahe Dam at fair market value, subject to such offsets as may be agreed upon, with provisions to sell power generated at Oahe Dam at rates necessary to honor all existing contracts for the sale of pumping power and firm, wholesale power during their present term and sufficient to retire debts of the United States that may be agreed upon; provided, however, that the Tribe may increase power production at the dam by feasible upgrades and market the new power at market rates and after expiration of current contracts market power at rates reflective of the market; and provided further that legislation to purchase generators and transmission facilities will also include provisions to finance wind and/or natural gas power generation on the Standing Rock Indian Reservation to combine with hydropower production, thereby using Tribe's water and land resources effectively for the benefit of the Tribe without further erosion, diminishment and denigration of Tribe's water right claims.

BE IT FURTHER RESOLVED THAT, the Standing Rock Sioux Tribal Council rejects all reports and investigations of the Bureau of Reclamation on the Cannonball and Grand Rivers watersheds and any and all proposals by Bureau of Reclamation for an Indian Small Water Projects Act and that all ongoing efforts of the Bureau of Reclamation respecting these specific efforts will cease by this directive of the Tribal Council.

BE IT FURTHER RESOLVED THAT, the Tribal Council of the Standing Rock Sioux Tribe directs the Chairman to take all reasonable steps, through the appointment of himself, Tribal Council members and staff to working groups, to petition members of Congress,

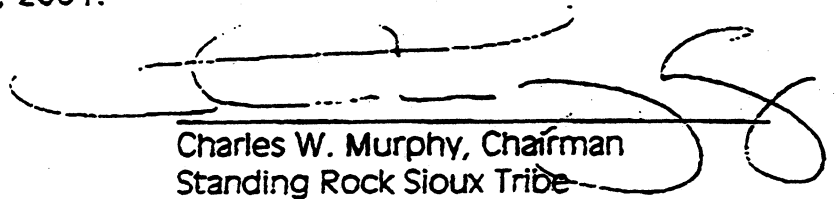
United States Supreme Court, when engaged in a Whiggish course, to subject the least powerful to the will of the States in matters involving property rights as evidenced by the *Dred Scott*, the *O'Connor Ghost* and comparable decisions of expediency.

BE IT FURTHER RESOLVED THAT, the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION


We, the undersigned, Chairman and Secretary of the Tribal Council of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of (17) members, of whom 12 constituting a quorum, were present at a meeting thereof, duly and regularly, called, noticed, convened and held on the 5th day of April, 2001, and that the foregoing resolution was duly adopted by the affirmative vote of 11 members, with 0 opposing, and with 1 not voting. THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.

DATED THIS 5th DAY OF APRIL, 2001.



Charles W. Murphy, Chairman
Standing Rock Sioux Tribe

ATTEST:



Elaine McLaughlin, Secretary
Standing Rock Sioux Tribe

(OFFICIAL TRIBAL SEAL)

Interim Executive Director:
Elwood Corbine

Member Tribes:
Fort Peck Assiniboine & Sioux
Tribes Poplar, Montana

Cheyenne River Sioux Tribe
Eagle Butte, South Dakota

Chippewa Cree Tribe
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe
Fort Thompson, South Dakota

Eastern Shoshone Tribe
Fort Washakie, Wyoming

Flandreau Santee Sioux Tribe
Flandreau, South Dakota

Fort Belknap Tribes
Harlem, Montana

Kickapoo Tribe in Kansas
Horton, Kansas

Lower Brule Sioux Tribe
Lower Brule, South Dakota

Northern Arapaho Tribe
Fort Washakie, Wyoming

Northern Cheyenne Tribe
Lame Deer, Montana

Oglala Sioux Tribe
Pine Ridge, South Dakota

Omaha Tribe
Macy, Nebraska

Ponca Tribe of Nebraska
Niobrara, Nebraska

Prairie Band Potawatomi Nation
Mayetta, Kansas

Rosebud Sioux Tribe
Rosebud, South Dakota

Sac & Fox Nation of Missouri
Reserve, Kansas

Santee Sioux Tribe
Niobrara, Nebraska

Sisseton-Wahpeton Sioux Tribe
Agency Village, South Dakota

Spirit Lake Tribe
Fort Totten, North Dakota

Standing Rock Sioux Tribe
Fort Yates, North Dakota

Three Affiliated Tribes
New Town, North Dakota

Turtle Mt. Band of Chippewa
Belcourt, North Dakota

Winnebago Tribe of Nebraska
Winnebago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

August 29, 2001

Rosemary C. Hargrave, M.S.
Missouri River Master Manual Project Manager
US Army Corps of Engineers
USAED-Northwestern
CENWD-MR-ET-R
12565 West Center Road
Omaha, NE 68144-3869

Dear Ms. Hargrave:

I am concerned with comments attributed to you at the June 27, 2001, Army Corps' Consultation and Coordination meeting in regards to the role of the Mni Sose Intertribal Water Rights Coalition in Master Manual issues. It is my understanding that you indicated the Army Corps had hoped to only deal with the Mni Sose Intertribal Water Rights Coalition on Master Manual issues, rather than each Tribe, but that Mni Sose had "dropped the ball". During a conference call held today to discuss the agenda for the September 12-14, 2001, Tribal Master Manual meeting, you said that some Tribes do not feel that Mni Sose speaks for them on Master Manual issues.

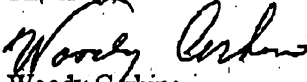
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Mni Sose respects the Government-to-Government relationship the Army Corps of Engineers has with the Tribes. I would like assurance that the Army Corps of Engineers recognizes the role Mni Sose Coalition plays in regards to Master Manual issues does not replace the direct relationship the Corps has with tribal governments, and that this relationship must and will continue to be conducted on a Government-to-Government basis.

I welcome a dialogue with you to discuss this issue further. I can be reached at (605) 343-6054.

Sincerely,


Woody Corbine

Interim Executive Director

Cc: Col. David Pastabend
Larry Cieslik
Mni Sose Tribal Delegates

INTERTRIBAL Council On Utility Policy

>> **Box 831, Rosebud, SD 57570 • Phone: 605-747-4097 • Fax: 605-747-4099** <<
Patrick Spears, President: 605-945-1908 or Pnspears2@aol.com Robert Gough, Secretary, Rpwgough@aol.com

June 27, 2001

The Honorable Thomas E. White
Secretary of the Army
U.S. Department of the Army
101 Army – Pentagon
Washington, D.C. 20310-0101

The Honorable Spencer Abraham, Secretary
U.S. Department of Energy
1000 Independence Ave. SW
Washington, D.C. 20585

The Honorable Gale Norton, Secretary
U.S. Department of the Interior
1849 C St. NW
Washington, D.C. 20240

And

Administrator Michael Hacskaylo
Western Area Power Administration
12155 W. Alameda Parkway
Lakewood, Colorado, 80228-8213

Honorable Secretaries and Administrator Hacskaylo:

On behalf of our member Tribes in the Missouri River basin and the Great Plains Regional Tribal Chairman's Association, the Intertribal Council On Utility Policy submits these comments in light of the growing interest in wind development among the Tribes of the Northern Great Plains.

Upon our review of materials related to release by the U.S. Army Corps of Engineers of its "draft implementation plan" and our understanding that an analysis of the impacts of several alternative management proposals is being conducted by the Western Area Power Administration in terms of the effects of those proposals on the production of hydropower marketed by Western, the Intertribal Council On Utility Policy notes that

there is presently no consideration of the potential for integrating significant wind generation into the transmission grid operated by Western.

The Intertribal Council On Utility Policy has on several occasions raised the question of the potential for greater flexibility in Corps' operation and management of the Missouri River dams and Western's dependence and transmission on hydropower that could be gained if there were an available alternative source of electrical power such as utility scale wind generation distributed throughout the region. This potential grows in importance given the fact that shifts in precipitation patterns and reduced mountain snowpack, not inconsistent with scenarios regarding longer term climate change and variability, are currently resulting in expected shortfalls in hydropower production and increased costs in supplemental electrical power necessary for Western to meet its contractual obligations. A recent report by Kevin Woster, published in the Sioux Falls Argus Leader (6/17/01), included the following:

The U.S. Army Corps of Engineers estimates that Missouri River dams will fall about 4 billion kilowatt hours short of normal power generation this year. If WAPA has to buy that at 6 cents per kilowatt hour, the cost will be about \$240 million.

The agency already has spent \$140 million to buy power since the federal fiscal year began October 1. By comparison, WAPA spent a total of \$57 million, \$38 million and \$25 million in the three years prior to this one, said Dale Strege, power marketing manager for WAPA in Watertown.

"We've spent a lot of money already," Strege said.

Eventually, the premium rate WAPA pays to compensate for lost power on the river could be passed on to consumers. But it won't be this year. WAPA is operating under price contracts with its buyers, and those won't change for a while, (WAPA official Bob) Riehl said.

"We've been through some pretty good water years recently, so we've got somewhat of a cushion," he said. "It usually takes one, two or three years before it has a serious rate impact."

So both WAPA and the Corps of Engineers, which operates the Missouri River dams, are hoping dry conditions in the upper basin don't continue.

Corps water specialists are projecting the lowest total power generation for the Missouri River system this year since record keeping began in 1967.

The system already has set a lowest-ever mark for power generation in the month of May.

The six dams on the main stem of the Missouri River – four in South Dakota, one in North Dakota and one in Montana – generated 317 million kilowatt hours in May. That is 37 percent of normal.

The corps is projecting total power generation for the year at 6.2 billion kilowatt hours. Normal is 10.2 billion.

It would appear to be both prudent and advantageous for both the U.S. Army Corps of Engineers and the Western Area Power Administration to explore the potential of adding distributed wind generation to the Missouri River basin's electrical grid system in terms of cost, power supply, and enhanced operational flexibility in river management.

The wind potential on Indian Reservations in the United States is tremendous. On reservations in the Pacific Northwest there is an estimated potential of between 28,000 and 57,000 megawatts, up to seven times the installed hydropower generation capacity of the Bonneville Power Administration, which has just announced its intention to purchase of 830 megawatts of wind power as part of a major wind power initiative in the Northwest.

The U.S. Department of Energy has reported that the wind resources of the Great Plains alone could meet 75% of the electricity demand in the lower 48 states. In the Northern Plains, the wind potential on the Indian Reservations in North and South Dakota alone exceeds 250,000 megawatts, well over 100 times the hydropower generation of the Missouri River. Development of even a small portion of this Tribal potential can make a significant contribution to the energy budget of the entire West.

The Intertribal Council On Utility Policy formally requests that the relevant federal energy agencies explore the tremendous potential of utilizing both intermittent, but unlimited wind resources and the firm, but limited and potentially diminishing hydropower resources, in tandem to create an even more powerful western renewable energy system. The Department of the Interior has a special role to play here with regard to both the BOR's operation of smaller dams in the region and historically unfulfilled authorizations for renewable energy development on Tribal lands under the 1992 Energy Policy Act. Developing a regional wind-hydro hybrid system will require visionary leadership and perhaps a national commitment to reconfigure and enhance our country's electrical transmission system, not unlike the commitment made decades ago to develop our national interstate highway system.

In addition to being a clean renewable resource, wind energy can be cost effective at 3 to 4 cents per kilowatt hour. Further, wind has several major advantages over its conventional rival sources of energy. The cost of its fuel input never changes over the life of the installation (30 years) in contrast to natural gas-fired plants where running costs have sky rocketed this past year. Wind generation is ideally suited to providing dependable supplies of predictable power at long-term fixed rates. Moreover, electricity generated from wind can be commissioned in a matter of months as opposed to the years it takes for conventional generation projects to be brought on line. And all of this can be had without the NOx, SOx, heavy metals, or green house gas emissions associated with conventional fossil fuels.

Expenditures in the development of distributed wind generation would hardly exceed even a few years of supplemental purchases at today's electricity market costs. While

the current drought-like conditions and shifts in precipitation are consistent with forecasts of greater climatic variability, there have been no predictions that energy costs are going to decline anytime soon. Investment today in distributed wind generation could continue to provide clean renewable electricity over the next thirty plus years regardless of changes in precipitation patterns and river flow levels. Innovative programs, such as a "green tag" purchase of wind generation from Indian reservations to meet established federal green power goals, could encourage the rapid application and deployment of proven wind technologies, assist in the sustainable development of reservation economies, help address environment justice considerations, and better utilize existing federal electricity transmission capacity.

In light of the above, and the tremendous reservation wind potential in the Missouri River basin, the Intertribal Council On Utility Policy respectfully requests the following:

- That the U.S. Army Corps of Engineers formally consider and incorporate the potential of distributed wind development and generation into revision of its "draft implementation plan" and Master Manual with regard to the operation of the dams on the main stem of Missouri River;
- That the Western Area Power Administration consider and incorporate the potential of distributed wind development and generation into its consideration of impacts across the various alternative proposals offered by the U.S. Corps of Engineers in its "draft implementation plan" and Master Manual;
- That the Western Area Power Administration reconsider its Policy for Purchase of Renewables [Federal Register: August 20, 1996 (Volume 61, Number 162)] as part of a truly integrated resource plan for utilizing the existing energy generation capacity of the federal dams along with the abundant potential for reservation based distributed wind generation for an over all clean, reliable, low cost, rate based energy supply;
- That both the U.S. Corps of Engineers and the Western Area Power Administration engage in formal consultation with the respective American Indian Tribes in the Northern Plains with regard to the aforementioned plan and policy considerations;
- That the Department of Energy, energy efficiency and renewable energy programs and the Western Area Power Administration formally assess the costs and benefits associated with the establishment of a "green tag" program for the federal purchase of reservation based wind energy generation to meet established federal green power goals; and
- That the Department of Energy, Energy Efficiency and Renewable Energy programs, and the Department of the Interior, Bureau of Indian Affairs, provide technical and financial support to the respective American Indian Tribes in the
Cheyenne River Sioux Tribe · Cheyenne River Telephone Authority · Flandreau Santee Sioux Tribe
Lower Brule Sioux Tribe · Omaha Tribe · Rosebud Sioux Tribe · Spirit Lake Tribe · Standing Rock Sioux Tribe

Northern Plains for appropriate engineering and interconnection studies to fully assess the integration of reservation wind potential into the federal electricity grid and our Nation's energy supply.

On behalf of the member Tribes in the Great Plains Regional Tribal Chairman's Association and the Intertribal Council On Utility Policy, we appreciate your earliest consideration of the above mentioned matters, and would be happy to engage in further conversation and consultation on developing an ecologically and economically sustainable energy infrastructure utilizing renewable energy generation on Tribal lands.

Sincerely,

**Patrick Spears, President
Intertribal COUP**

**Robert Gough, Secretary
Intertribal COUP**

**Cheyenne River Sioux Tribe · Cheyenne River Telephone Authority · Flandreau Santee Sioux Tribe
Lower Brule Sioux Tribe · Omaha Tribe · Rosebud Sioux Tribe · Spirit Lake Tribe · Standing Rock Sioux Tribe**

Interim Executive Director:
Elwood Corbine

Member Tribes:
Fort Peck Assiniboine & Sioux
Tribes Poplar, Montana

Cheyenne River Sioux Tribe
Eagle Butte, South Dakota

Chippewa Cree Tribe
Box Elder, Montana

Crow Tribe
Crow Agency, Montana

Crow Creek Sioux Tribe
Fort Thompson, South Dakota

Eastern Shoshone Tribe
Fort Washakie, Wyoming

Flandreau Santee Sioux Tribe
Flandreau, South Dakota

Fort Belknap Tribes
Harlem, Montana

Kickapoo Tribe in Kansas
Horton, Kansas

Lower Brule Sioux Tribe
Lower Brule, South Dakota

Northern Arapaho Tribe
Fort Washakie, Wyoming

Northern Cheyenne Tribe
Lame Deer, Montana

Ogala Sioux Tribe
Pine Ridge, South Dakota

Omaha Tribe
Macy, Nebraska

Ponca Tribe of Nebraska
Niobrara, Nebraska

Prairie Band Potawatomi Nation
Mayetta, Kansas

Rosebud Sioux Tribe
Rosebud, South Dakota

Sac & Fox Nation of Missouri
Reserve, Kansas

Santee Sioux Tribe
Niobrara, Nebraska

Sisseton-Wahpeton Sioux Tribe
Agency Village, South Dakota

Spirit Lake Tribe
Fort Totten, North Dakota

Standing Rock Sioux Tribe
Fort Yates, North Dakota

Three Affiliated Tribes
New Town, North Dakota

Turtle Mt. Band of Chippewa
Belcourt, North Dakota

Winnebago Tribe of Nebraska
Winnebago, Nebraska

Yankton Sioux Tribe
Marty, South Dakota

Mni Sose Intertribal Water Rights Coalition, Inc.

P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

August 29, 2001

Rosemary C. Hargrave, M.S.
Missouri River Master Manual Project Manager
US Army Corps of Engineers
USAED-Northwestern
CENWD-MR-ET-R
12565 West Center Road
Omaha, NE 68144-3869

Dear Ms. Hargrave:

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Interim Executive Director

Cc: Col. David Fastabend
Larry Cieslik
Mni Sose Tribal Delegates

A1-593

Missouri River Master Manual
Tribal Orientation Conference
September 12-14, 2001

Tape # 1

September 12, 2001 A.M. Randy Perez – Mni Sose and Rose Hargrave

Perez: This paper, that's available I will give it to Rose so she can make a copy of it and share with the participants here. I've got my fax copy and this copy I got off of the Internet.

Hargrave: Great, thank you.

Perez: Getting back to the Master manual, being on the Mni Sose Coalition, since it started in the early 90s, one of the very hot items that the Coalition has talked about. We've got some discretion with it; we've had some meetings with the Corps of Engineers; we have gone to Omaha and the Coalition has sponsored meetings at Rapid City and kind of put them on for the Master Manual. Its still a very...it's an item that many of the tribes that are with the Coalition have a very strong point of view on. They feel that the water rights on the Missouri River technically is...it's something that they wish to retain and identify, but I'll get into the discussions here and I'll read this paper here. Supposed to last about a half hour I guess...9:30. I'll read this and this will be our position paper.

The protection and management of tribal water and land resources in the Missouri River watershed are among the most critical priorities facing the 28 basin Tribes.

Indian Tribes control more than 15 million acres of land within the watershed, geographically distributed from the headwaters in Montana to the mouth of the Missouri River in Kansas and Missouri. These reservations were set aside for use and development as permanent tribal homelands.

Despite historical and legal rights to the water, the Tribes have not participated fully in the benefits of the Missouri River water resources and its tributaries. Three hundred and fifty thousand acres of land, or twenty-three percent of the 1,499,759 acres taken for the construction of the dams and reservoirs under the Pick-Sloan plan, were lands of the Tribes. Although the Federal government promised irrigation development and participation in the electricity generation, the Tribes are only beginning to receive these benefits.

Tribal leaders are seeking legal, administrative, economic, and physical control over their significant water resources as a means to achieve sustainable reservation economy, cultural well-being, and sovereignty of tribal people in the watershed. The Mni Sose Intertribal Water Rights Coalition was formally organized in 1993 as the mechanism to pursue these goals.

The Coalition's objectives are to strengthen tribal capabilities to manage, control, and protect tribal water resources pursuant to tribal goals and values as defined by tribal law. In addition, the Coalition seeks to enhance tribal capabilities to implement environmental programs pursuant to federal law.

For decades, inadequate financial resources have prevented the control, management, use, and jurisdiction by the Tribes over their water resources in the Missouri River Basin. This results in inadequate consideration of tribal legal entitlement to water. Inappropriate social, governmental, economic, and organizational mechanisms at the tribal, federal, and state levels result in the failure to incorporate tribal input in policy formation. Furthermore, the Tribes have not had the opportunity to participate in the social and economic development process for the management of the Missouri River. Yet, control over the water resources in the Missouri River Basin is central to the sovereignty and self-determination of the Tribes. It is a key to their survival, economic prosperity, cultural strength, and development.

The Tribes have great diversity in water resource management skills and expertise. Each Tribe has particular water resource issues existing on its reservation. Although each Tribe has specific areas of concern, they realize that legal and regulatory actions by other agencies may set precedents and binding decisions that affect all Basin Tribes. The Tribes are aware that they must act in concert to address these issues to assure that present actions or inactions of an individual Tribe do not constrain tribal alternatives in water resource management.

The following problems confronting the Tribes as they address the myriad of water rights issues in the Basin:

1 . The Tribes lack participation in the management of the Missouri River water system.

The Army Corps of Engineers and state governments previously ignored tribal and Indian water rights in the management of the Missouri River. However, through the Coalition's involvement with the Missouri River Basin Association, the States and the Army Corps now recognize tribal impacts and issues related to the future operation of the Missouri River.

In addition, the states have also threatened Indian water rights by invoking the McCarran Amendment. Tribal intergovernmental relations are tribal federal relations, not tribal/ state. However, when Congress waived the sovereign immunity of the United States in water rights adjudications under the McCarran Amendment, the U.S. Supreme Court allowed adjudication of Indian water rights, some of the most valuable treaty rights of the Tribes, in state courts. State governments, typically representing non-Indian water users in competition for Indian water, exert strong influences rendering no fair or meaningful state forum in which to address Indian water issues.

In the 1940s and 50s, the federal government constructed massive water facilities including dams, hydroelectric facilities, canals, navigation structure, and flood control features on or next to most of the Indian reservations. Tribal people still remember watching in horror as communities, prime bottom lands,

riparian areas, forests, and grave sites were inundated by the construction of these facilities and the water siphoned away from the Reservations.

The Corps of Engineers has estimated that its operation of the Missouri River dams contributes \$1.3 billion to the national economy annually. Of that figure, one-half is derived from the sale of hydroelectricity by the Department of Energy. The remaining contribution comes in the form of navigation benefits, flood control benefits, and recreation development.

Yet the Tribes share little of these revenues. In fact, reservoir level fluctuations impact tribal environment and wildlife habitats, and native burial grounds and ceremonial sites are subject to erosion and inundation.

- 2. The Missouri River Basin Tribes lack the technology and technical skills to participate, on a meaningful level, with state and federal agencies in the management of the Missouri River Basin.**

A broad-scale and cooperative tribal resource management effort is needed to insure effective tribal participation in water resource management and development. The Missouri River Basin Tribes must compete with the Army Corps of Engineers and other federal and state agencies possessing vast fiscal and human resources.

The Tribes need to cooperate and collaborate among themselves to decide and

identify alternatives regarding water resource management. Individual Tribes, especially smaller Tribes, lack the necessary fiscal resources to employ technicians and professional hydrologists to collect, analyze, and interpret data in Indian water rights issues. They need experienced professionals to advise tribal leaders and their staff on the development and management of agricultural lands and systems. These professionals are necessary to track and calculate tribal water entitlements; inventory, assess, and remediate environmental problems; evaluate and protect community health; market and develop tribal water resources; and operate tribal drinking water and waste water facilities.

- 3. Even if federal agencies would like to involve Tribes as cooperating agencies in the management of the Missouri River, Tribes lack the resources to collect and analyze the data before making their recommendations.**

The Missouri River Basin tribal natural resources and water resource offices depend on discretionary funding from federal agencies for maintenance of their operations. They derive the bulk of this funding from the Bureau of Indian Affairs and other governmental agencies, with annual funding priorities mandated by Congress. The Tribes are vulnerable to the annual fluctuations in Federal funding, which inhibit long-term planning. The agencies have neglected the smaller Tribes as to funding, training, technical assistance, and Federal outreach.

New Federal requirements for drinking water protection, solid waste control, non-point source pollution abatement, and hazardous waste have affected Indian reservations. Tribes have been charged with implementing these legislative regulations and rules with inadequate federal funding. The Tribes must take the lead in the development of these codes and regulations or be subjected to state-imposed codes. Tribes need critical skills to carry out these programs pursuant to current and additional federal laws. Such skills include sound technical capabilities and administration, policy, and managerial skills.

- 4. The Missouri River Basin Tribes, individually, have been unable to address water rights issues due to the Federal agencies' complex infrastructure, geographical isolation, and lack of technical skills and technology.**

The current legal environment for the resolution of tribal rights to the Missouri system and its tributaries is highly charged, competitive, and fast moving. Many tribal leaders perceive the legal system to be extremely threatening to tribal sovereignty.

Some states have adopted laws to quantify Indian water rights. This has forced Tribes to negotiate with states to identify quantities of Indian water. The control and knowledge of the resource base and the presence of tribal water management capabilities can exert a profound influence on the positive or

negative outcome of a negotiated settlement. In any case, as more states move to quantify tribal water using the state court proceedings or negotiations, many Tribes are seeking to develop their technical knowledge and skills in water resource management.

I'm from a tribe that in (inaudible) for now winner's decision was created on Fort (inaudible) but in Montana... Montana is a general stream of communication state, which manages the (inaudible) allow that the whole state would be adjudicated and that criteria falls under the McCarran Amendment which we did talk about in the beginning. Therefore, Montana is probably one of the few states that have a general adjudication act. North Dakota, South Dakota do not participate in that. So therefore, Montana... well, ...subtract the headwaters... Montana is in the process of settling their water rights with each individual tribe. They are down to a few that are left. Montana has seven tribes; five tribes so far have participated... they are down to the Blackfeet Tribe and (inaudible) Tribe. The (inaudible) Tribe flows into the Pacific Ocean where the rest of the tribes flow into the Missouri River. So that's a point in Montana.

South Dakota and North Dakota are under a different circumstance it's my understanding that South Dakota was going to initiate a general adjudication act then it was revoked or put aside until further notice.

But I guess with the Missouri River here I got new (inaudible) perspective of the

Mni Sose is that we do have one of the major problems with the Mni Sose has is because you are 28 tribes. Some of these issues are legal and technical that Mni Sose really can't take a position for a particular tribe. You can come up with a general agreement amongst the tribes but the legal part of the tribe...that's their individual responsibility and they have to provide that themselves. The Mni Sose really can't go against any tribe that pushes through or otherwise on the same consensus of 28 tribes. Then those sovereignty issues is that each individual tribe, tribal governments actually vote on those so work out a lot of relief when it comes to some legal issues that Mni Sose can handle.

Well, I have to conclude here and get on with the show here.

The Tribes strive to exert an active water resource management presence and improve technical capabilities in water resource development. This will reduce or eliminate the need for state and federal control of tribal resources. The Tribes would like the opportunity to develop their homelands, devising resource use and management strategies that would fit within the framework of state, Federal, and tribal laws, eliminating the need for costly litigation.

The original motivating factor that formed the Mni Sose Coalition was the collective and basin-wide concern of the Tribes over the quantification of tribal water rights. Not including any legal or negotiated proceeding, nearly all of the 28 basin Tribes are involved in some aspect of water rights development. The

identification, development, management, and protection of water rights are underway. All Tribes are at different stages with respect to water quantification, water resource development, and control structure. The profound realization that tribal water rights exist even without formal adjudication has prompted many Tribes to seek ways of securing increased control over the resource through tribal resource management activities, including resource policy development.

Tribal lands are located in isolated, rural areas with limited access to current resource technology, expertise, and equipment. The smaller Tribes have not been able to keep pace with technology (i.e., computerized water monitoring systems), and as a result, are unable to fully assess their water resources and tribal options in water management due to lack of financial resources. Even those Tribes with some financial resources have inadequate resources to cover their million-acre plus reservation lands. Access by computer to data and expertise is an effective way to address this need.

The basis for securing the greatest amount of control over water resources, with the greatest flexibility in use over the long term, consists of three components:

- Accurate and comprehensive technical information regarding tribal resources;

- Capable and competent tribal water resource managers; and
- Strong tribal government with effective resource-governing policies.

Conclusion

The Indian Nations of the Missouri River basin possess extensive land and water rights, which will enable them to be self-sufficient and to control their destiny. Yet, tribal land and water have been developed by various agencies of the United States government for the benefit of others. Meanwhile, tribal development efforts are hampered by inadequate environmental infrastructure. This seriously threatens public health on Indian Reservations, as well. Yet, neither the Congress, U.S. Public Health Service, nor the environmental movement has given serious consideration to these threats.

There can be no meaningful development without improved infrastructures. Consequently, the improvement of water, sanitation, and solid waste facilities of Indian Reservations remains a foremost concern of the tribal leadership.

Moreover, the Indian Nations of the Missouri River basin are telling the United States to stop using tribal land and water for hydroelectricity, navigation traffic, and irrigation by the homesteaders unless the Tribes are adequately compensated for the use and degradation of these resources. In addition, the federal government is using tribal resources in a manner that destroys wildlife

habitats and environmental and cultural resources. There can be no sustainable development unless these resources are preserved and enhanced.

Ultimately, the approach of the larger non-Indian society toward the Indian rights and treaties must change dramatically. Instead, Tribes are perceived as an inconvenience as the federal government and non-Indian society take and utilize tribal land and water for their economic benefit. The Tribes will continue to exhibit the patience and perseverance of tribal ancestors in asserting these rights. By continuing to emphasize treaty rights to land and water, the Tribes will undertake sustainable development and create the permanent homelands that are guaranteed in the treaties themselves.

That's the conclusion of the position paper on the Mni Sose. And that's what we all hold here and we can make copies of it and pass it out. Thank you.

Hargrave: Thank you. You know, I guess, (inaudible) few of them I think maybe what we could do is kind of go around and if everybody wants to tell us who they are and who they represent and maybe what they do. (Inaudible)

So I guess I'll start off. My name is Rose Hargrave and I'm with Army Corps of Engineers out of Omaha and I'm a Practice Manager for the Missouri River Master Manual.

McAllister My name is Roy McAllister and I'm the Technical Coordinator for the study with the EIS/Master Manual. I also work with Rose in Omaha.

Stas: My name is Nick Stas, I'm with Western Heritage Power Administration out of the Upper Great Plains Region. I headquarter in Billings, Montana; I'm the Regional (inaudible).

Olson: My name is Mike Olson; I'm with U.S. Fish & Wildlife Services here in Bismarck. I work on fish and wildlife issues on the river from Montana to Missouri.

Sapa: My name is Al Sapa. I'm Field Supervisor with North Dakota Fish and Wildlife Service. Our office is the lead for the Fish and Wildlife Service and process the Endangered Species Act activities on the Missouri River and we've had sort of a major goal and (inaudible).

?: (Totally inaudible.)

Harski: My name is Jim Harski and I'm with Bureau of Recreation here and it's a good opportunity to have a better understanding of some of these issues.

Thomas: My name is Patricia Thomas and I'm Administrator of Three Affiliated Tribes.

Madison: Deb Madison, Environmental Programs Manager for (inaudible).

Otto: Becky Otto, archaeologist (inaudible).

Foustor: Carl Foustor, administrator for the Fort Peck (inaudible) Resource office in (inaudible) Montana.

Rousseau: My name is Dennis Rousseau; I'm director (inaudible).

Johns: I'm Mary Lee Johns; I work in the Army Corps of Engineers and helping them with their tribal consultation process. I'm also an enrolled member of the Cheyenne River Sioux Tribe.

Baker: I'm Gail Baker; (inaudible) I am member of Fort Berthold Tribe what I'm about here is support and if you can actually do anything about these grave robbers who pass the buck again. That's what I'm here about and I will be here tomorrow (inaudible). Thank you.

(Totally inaudible.) Laughter.

Fallis: My name is Fremont Fallis. I guess I was one of the original incorporators of this (inaudible) for water rights (inaudible) incorporated by (inaudible) Tribe, (Ogalala Sioux Tribe and Standing Rock Sioux Tribe. I was a delegate to that (inaudible). Currently I work as a coordinator for the (inaudible) Sioux Tribe and I still, I guess,

represent the Rosebud Sioux Tribe on the east (inaudible) of the Missouri River whether it be the Master Manual or the (inaudible).

Moore: I'm Rick Moore. I'm at the Northwestern Division Office and work with Rose Hargrave on the Master Manual and I as recently as last week have been officially assigned over to a Master Manual, I guess, and to work with the tribes in the coordination of the Master Manual. So if you receive emails from me or get phone calls from me or whatever. I'm the Master Manual person; that's who I am. Thank you.

Hargrave: I thank you everybody. You know kind of in terms of maybe what the Corps was hoping for the meeting today and maybe what our goals are. And we are so good at this—at the Corps. We can pour more information on you than you stand and we can just turn on the hose and let go. But what we really hope to get out of the meeting today and this week, I think, is some really meaningful discussions in terms of how we work with the tribes. How our consultation proceeds; issues that are important to the tribes and while we will provide information maybe to foster those discussions, I guess, rather than having us just stand up here and continually lecture the group, we really would like to maybe get some of the discussions into a set type of format so we have like an exchange here. Rather than us just giving formal type presentations. We do have a number of other Federal agencies who, of course, were invited, some of them couldn't get out of Denver today, so hopefully, we'll see those agencies either tomorrow or else some of them did forward us the

materials that they were going to go ahead and distribute and we'll go ahead and get that out to everybody.

But I guess what we would like to do is really get some discussions going—some meaningful discussions going. And I came on to the study in 1998, but it's my perception, I guess, I think for a lot of years we talked at the tribes about the Master Manual but I don't know that we engaged in meaningful discussions with the tribes and in a meaningful consultation process that benefits the United States and the tribes. I guess I'm hoping that we can have some of those discussions over the next couple of days. In particular, we are in a comment period now on the Master Manual/Revised Draft EIS (RDEIS). That comment period started August 31 and that comment period is going to go ahead and it's going to extend until the end of February.

I think in the materials in your notebook that you have there, you have a schedule for a workshop in Huron that we went ahead and scheduled for the tribes and I think there is going to be one at Fort Peck and one at Lower Brule and one at Newtown. That again the Corps of Engineers scheduling the meeting and, you know, we've set the date, but I guess the point I want to make is, really we want the workshop and hearings to be *what the tribe wants*. The materials that the tribes want, the format the tribes want, the location the tribes want, the date the tribes want and so even though you see dates and locations there, we are very, very flexible and I think one of the things that we if we could get input out of this

meeting would be: what is the best way for us to work with the tribes to make sure that the tribes are participating meaningfully during this comment period. What is the best thing that the Corps of Engineers can do to ensure that folks within the tribes are educated and maybe the technical folks that some of the tribes have are really brought up to speed on this. So I am sincerely hoping that we will come away from the meeting with a better perception of what we should be doing with the tribes during this coming period.

So that being said, I guess what I'd kind of like to do maybe is a little bit go into where we are and how we got here and then maybe open it up for discussion.

I think most everybody in their book, you know, you have this Summary of the Revised Draft EIS (RDEIS). This booklet came out at the end of August and if we just kind of move to the booklet, if you go to page four and five. We talk about the journey. What has happened with the Master Manual process? Bottom line, this process has been going on a long time. The Missouri River Basin experienced a major drought in the late 80s, early 1990s and at that time the basin had really never experienced a major drought since the dams were built and so at that time we followed our manual and we pulled the upper three lakes, Fort Peck, (inaudible). We really...

(End of side 1 of Tape 1)

Voice: Reminded miners with their pollutants up the Missouri River (inaudible) flows into the tributaries and up the Missouri River and (inaudible) wildlife studies (inaudible) pollutants involved in the water (inaudible).

Hargrave: Oh, one thing we are doing and this is just real recent—within the past year and a half. We are working real close with the Environmental Protection Agency (EPA). The EPA has an oversight — Clean Water Act. You know, one of the things that you will see in the EIS that is coming out here within the next couple of weeks is an analysis of water quality. Where the Corps is concerned—the Master Manual will not solve every water quality problem that there is in the Missouri River. But what we try to do is identify some water quality issues, including the mining. The mining issue. What we are looking at is how does our operation and the dams impact the water quality of the Missouri River? So in the EIS that you see in the next couple of weeks there is a (inaudible) water quality appendix that is about that thick. Tremendous amount of information. It's really going to be a good (inaudible) for Missouri River quality information.

So the long answer to your question is, yes, we are looking at water quality (inaudible) working real closely with EPA.

Voice: Curious factor both in our number of shoreline hangs on a thread in Great Falls (inaudible). I don't know why your (inaudible) distributor of (inaudible) the Corps won't take care of the distributor. Why don't they do (inaudible)? This pollution

stuff, miners in (inaudible) an issue a long time ago. That's the way I see it. They wait until the last minute to try to clear it up and it's pretty well damaged.

(Inaudible.)

Voice: (Inaudible.)

Hargrave: One of the things with regard to—there's some pollutants in the reservoirs—I'm thinking particularly about Lake Oahe, that they are buried in the sediment at the bottom of the lake. I guess one of the things we are looking at is—do our actions or how we manage the river or do anything to stir up those sediments. Right now the materials or the toxic things are like inactive; in an inactive state which is buried in the sediment. But if you do—we are working very hard to make sure that our actions don't do things that would stir up those sediments or make those chemicals inactive in the water column. So that is one aspect that we are looking at. But the point is well taken, we know (inaudible).

They've just kind of going on. We put out of the EIS in 1994 and we heard from the tribes as well as the rest of the basin. They didn't like the alternative we collected and they thought we needed to do a lot more studies of the Missouri River—we did those. In 1998 we put out another document and we didn't identify a preferred alternative but what we did is we put alternatives out there for discussion to see if we couldn't work with the tribes, work with the rest of the basin to see if we couldn't get some agreement on what the Water Control Plan for the

Missouri River ought to look like.

At that time we did work very closely with the Mni Sose and the Mni Sose at that time did have like a technical working group and those folks did come to Omaha and while the Mni Sose did come in with a particular tribal recommendation for an alternative they did come in with a request for additional studies for the tribes. So the Mni Sose, I guess maybe this is just my perspective, but the technical group that the Mni Sose put together at that time, I guess we thought was a tremendous value to the tribes. But since that time I don't—I'm not quite sure what has happened with that technical group but it seems like that maybe, and we can get more thoughts on that, but that might have been more good forum for the tribes. Anyway...

Voice: You want the (inaudible) be considered a non-point source then?

Hargrave: A non-point source?

Voice: Over the years, tribal (inaudible) conference, in the end you have to match them to a non-point source. (Inaudible) Corps said at the time (inaudible) consider (inaudible).

Hargrave: I think you are getting to the water rights issues. First of all, we do not consider the tribes not a point source. I mean, the tribes are (inaudible) nation.

Voice: (Inaudible.)

Hargrave: I can't speak for...

Voice: I'm not trying to start an argument here but when I heard that on the tribal council (inaudible) Corps of Engineers (inaudible) basically that's what (inaudible) we were always considered a non-point source.

Voice: So hopefully there will be a new manual where the tribes will have a little say into it this time.

Hargrave: You know, sometimes when I look at it our relations with the tribes has changed tremendously when this process started in 1989. Even at the national level, now we have policy guidance. We are getting some direction on what our relationship with the tribes is supposed to be. So I still look at it like we are in some kind of an evolution process. I think we get better and better but I think the whole relationship with the tribe, you know, it continues to evolve and I think it's going to continue to evolve even when we are well past revising the Master Manual. So I guess it kind of looks like we are making progress. It's slow but I think we are making progress with our relationship with the tribes.

Voice: It's really sad, you know, because when people first came up here they survived

because tribes are a nice group of village. (Inaudible) Now they make these deals about water rights and stuff and still we are left behind. We need to survive on part of our ancestors here. (Inaudible) I know about two or three thousand years and still we are left behind. It's really sad, really.

Voice: Then they say they are rooting for civil rights today.

Voice: I don't know about that.

Voice: Do you have a copy of the Corps of Engineers (inaudible)?

Hargrave: The National Environmental Policy Act—NEPA?

Voice: NEPA.

Hargrave: Right, in terms of environmental justice, in terms of, you know, we are following NEPA for this Master Manual.

Voice: If you are following NEPA under your Corps of Engineers, you have your set of regulations.

Hargrave: Regulations, right! Yes, we have, the Corps has regulations on how we are supposed to implement NEPA and we are trying to follow those regulations.

Voice: I asked for a copy (inaudible) a year ago and he said he was going to send it to me and I'm still waiting for the copy the NEPA (inaudible).

Hargrave: Okay. We might even be able to give those faxed up here. We absolutely will get them.

So just kind of continuing on where we are at. So we put out this document in 1998 and we couldn't get any agreement on what the plan ought (inaudible). Actually in terms of the State there was actually a fairly high level of agreement. The Mni Sose is a voting member on the Missouri River Basin Association. When they took the vote relative to what a consensus plan ought to be, the Mni Sose elected to abstain from the vote and I think primarily that was because the tribes have some very special issues with the Corps relative to the management of the Missouri River that aren't issues at State. So the Mni Sose at that time abstained from voting on any kind of a flow plan.

So following that 1998 document we then got into formal consultation with the Fish and Wildlife Service under the Endangered Species Act because besides all these other issues on the Missouri River there are several endangered species. The Corps needs to address those and the Corps is required to comply with the Endangered Species Act. So during 1999 and 2000 we were in consultation with the Service.

The Service came back to us and they told us then their biological opinion. Mike will get into I'm sure. That the way that we currently operate the Missouri River jeopardizes the three endangered species on the Missouri River. So since that time we have been working to develop plans that comply with the Endangered Species Act as well as serve the other needs of the basin.

So this is kind of where we are at right now. The red arrow here, we just put out a document and this Revised Draft EIS (RDEIS) and the summaries they should have here that was just put out the end of August. Actually the hardcopy for the Environment Impact Statement (EIS) itself won't be available until next week, but you can get hardcopy of that document and each of the tribes, by the way, are being sent the full Environmental Impact Statement and you can also get it on a compact disk if you folks want to look at it that way. But, Todd, those should be coming out next week sometime so you might (inaudible).

But anyway what we are in now is we put out that Revised Draft EIS (RDEIS).

Voice: The Environmental Impact Statement and sending these to the tribal chairman?

Hargrave: Yes, each of the tribal chairmen is getting the Environmental Impact Statement.

Voice: You know it would be better if you sent also a copy to the Tribal Environmental

Offices sometimes tribal chairmen to the environment departments could be a long time before we get that.

Voice: That's a good point because a lot of times (inaudible).

Hargrave: Sure, absolutely. That would be Tribal Environmental Office?

Voice: Right.

Hargrave: Okay.

Voice: Ground water resources (inaudible).

Hargrave: Do we have that information, do we know?

Voice: Yeah.

Hargrave: Okay.

Voice: I suggest that anyone attending or participating also get a copy.

Hargrave: Oh, sure.

Voice: For them to make sure that they are giving you their correct address...

Voice: As you said earlier that your Corps are working diligently with the U.S. EPA so within the Missouri River basin you have Region 7 and Region 8. (Inaudible) flows into Region 8 so they are in touch with every Tribal Environmental Protection...

Hargrave: Okay, absolutely. We've been working real close with (inaudible) particularly from Region 8 but absolutely.

Voice: Region 7 has 9 tribes.

Hargrave: Right. We will go ahead and do that.

Voice: In the natural resources, each tribe has a Natural Resources Office also in addition to an Environmental Office. Some are together and some are separate.

Hargrave: The document when it gets out there and I guess this is one of the things that maybe I kind of wanted to...hoped we would discuss. We are going to put this fat old document out there to you. What's the best way for us to interact with the tribes in terms of explaining that document; in terms of helping the tribes to maybe better understand the information within that document? Because my sensing is that we should be working maybe with the environmental offices or the water

resource offices relative to that issue. Because this is an important issue to the tribes and, I guess, we want to do whatever we need to be doing to help them get through that document and to understand that document so that the tribes can give us meaningful, good comment.

Voice: (Inaudible.) Resources department (inaudible) combination there (inaudible) talk to (inaudible) and we are also talking (inaudible) habitat and so forth.

Hargrave: So maybe what our best course would be then to go through EPA to work... (long pause on Tape #1)

Voice: Just like to say very different views (inaudible) and so I would give them the same (inaudible). Should go back to the chairman (inaudible).

Hargrave: What is?

Voice: What is your official (inaudible).

Hargrave: Sure. Right and that's the way at least, now the consultation process, you know, we did get some draft policy guidance and we tried to identify a process to follow the draft guidance we have, but you know that process is kind of in an evolutionary stage, too. Absolutely I hope we get into this. We need input from the tribes on whether we are even on target with the process we have identified. Or are we way

off base with this—even where we think we are headed on the consultation.

Voice: Well, I'd like to add something in here while the iron is hot, so to speak. I think
(Carl) you are at the crux of all your problems right now. One of the things we are gathered here, different tribes, different Federal agencies, State agencies, so on and so forth, but no two tribes are alike. This... been a number of years now (centuries, I guess) but the government always tried to put us in the same shoe—they don't fit. What is being said here, there's a lot of merit and I think probably the easiest way would be for the Corps of Engineers, you're mandated to develop a Master Manual to address all the needs and responsibilities that you have to accomplish but you save a lot of time by going and consulting with each tribe. But take a little checklist along and I know it's difficult but we are the tribal governments and we as tribal members have difficulty working with our tribal leaders and other tribal departments. The left hand never knows what the right hand is doing sometimes. That's human nature. So you'd probably be better off just to go and visit with each tribal reservation and some reservations have two tribes but, generally speaking, with the exception of two they all have one tribal government.

Hargrave: You know, I think those comments are just tremendously on target...

Voice: Let me just finish on that, I'll probably not be here when you get into your government-to-government relationships. Those are mighty words—they sound good. Rolls off the mouth—we are a sovereign nation but there's a lot more

beyond that. Those are words we can use anywhere anytime. Get down to the meat of the thing though, if you develop a checklist and these are the things that really need to know from your reservation. How you work is handed down the line. Difference between the tribes you can kind of work together through this or however it might come about meeting with the Mni Sose. Mni Sose may be helpful in that matter; try to coordinate viewpoints of the tribes but yet you need to know the Corps of Engineers developed a Master Manual; what does on that segment of river where the Fort Peck or the Assiniboine, the Sioux or the Fort Peck Reservation. Assiniboine (inaudible) or Belknap or so on down the line.

Hargrave: Absolutely, a couple of things on what you just said, first... (Pause) And may have staff who can take this document and digest it. You know there are other tribes who don't have that same level of expertise. So tremendous differences between the tribes there. You know somehow...

(End of tape #1).

Tape # 2

September 12, 2001 A.M. Chairman Greg Borland & NEPA

Voice: Because you are dealing with a lot of environmental issues but yet I also have some agricultural concerns and so on and so forth but if we have one person that

is going to be speaking to the Board and that person could come and talk to the farmers, to the cultural groups and so on to make sure all the issues are addressed. The new Board could set something up but then there would also be the legitimate tribal response because if I'm setting out there in Oswego and I come up to you as an individual as a member of the Assiniboine Tribe at the Fort Peck Reservation these are my feelings and you respond to that. Well, then that kind of puts our tribal leaders in another position. See what I'm getting at?

Hargrave: Right. Right.

Voice: Because we do have a government; we do elect our officials; they are responsible. I hear some good ideas though. I think it's kind of a turn in the road a little bit and I think there's a way to address it but not in the traditional manner that we've been doing for the last 200 years. Let's turn this up a little bit and I think we can get things solved...

Johns: I think that one of the reasons we are having this meeting is because the idea behind it is that we provide the information—as much information at this meeting as possible. We begin the dialog and then from that point then tribal consultation can then proceed from this because there's so much information. Like Rose said, she can turn on the faucet and give you so much it could overwhelm anybody—the amount of paperwork and the amount information that can come out of any government agency. But the model is to try to give as much

information to the tribes and invited the people that were asked to at least attend the meeting were the environmental individuals who work in tribes and also land resources and anyone else that works on, you know, that has any input on the Missouri River. Then from that point then we can have the dialog with the tribes individually, but the idea was to begin this whole process and then have the tribes give us ideas on how to proceed from this. So I think that your suggestions are very valid but to understand where this meeting came from, it came from tribal leaders themselves suggesting that we have this meeting. Similar to the Indian Health Services—annual conferences or their regional conferences where they give some vital information that the tribes need to have to interact with the say, IHS throughout the year. That's where the idea came from.

Voice: This has turned out a lot better and the people have better (inaudible) IHS.

Johns: I'm just using IHS as an example. I'm just using it as an example. I'm not saying that we are going to follow down the path that IHS leads; it's just an example of why we are having this meeting. The fact that the Corps is at the point where they are evolving a tribal government-to-government relations or whatever term you want to use. I believe that the tribes have an opportunity to help create it and I don't think that we've had that opportunity before. I'm an enrolled of the Cheyenne River Sioux Tribe. I lived on the river and I was one of the individuals that were flooded out and we were forced to move to Eagle

Butte, South Dakota. So I went through the whole process and I'm also very much involved in helping to develop tribal consultation. I did it at the national level and I'm trying to help create this at the regional level now because I think it's vital to us as tribal members to help create or have the opportunity to create them. I'm sure that...like Rose's coming here and she is saying help us create this. So every suggestion is valid.

Hargrave: I think, absolutely. One of the issues we've had... I honestly think we are not connecting with the tribes here relative to the Master Manual. Just bear me very blunt, we have great paper trail on this and a wonderful record that's going to say that on da, da, da, we sent a letter to the tribal chairman and we go no response. Just making a wonderful record but we are not having meaningful government-to-government consultation. It's like we are just passing. That's what we want to have with the tribes. Just to be real blunt—we keep sending these letters out to the tribes saying to the tribal chairman saying do you want to be in government-to-government consultation, please if your tribe would like government-to-government consultation, please let us know. Then we send out another letter and then we send out another letter but there's actually very few of the tribes (Fort Peck is one of the tribes, by the way) but very few of the tribes who've actually said yes, we want to be in government-to-government consultation with the Corps on this. This is very important to us; particularly the 13 tribes that are directly on the Missouri River. I can't imagine that those tribes don't want to be in government-to-government consultation with us but we don't

hear necessarily from them.

Yellow Bird: Good morning, Rose.

Hargrave: Hi.

Yellow Bird: Hi, good morning everybody, I want to apologize for being late but the agenda that I received from the Army Corps says the meeting starts tomorrow. Want to talk about communication. Everybody's here and been waiting.

Voice: I heard you.

Yellow Bird: After all that the first thing I need to say is that sending letters to tribal chairs is (inaudible) after all these years we would hope that people would learn that is not the best way. You send a letter; you follow-up with a phone call; you follow-up with a face-to-face meeting. Our chairs and their staff are working on government issues all at one time and it's incumbent. I just heard you say you wanted to connect with the tribes—that's the best way to do it. You send a letter; you set up the meeting; you follow-up with a meeting face-to-face; government-to-government consultation. That's the best way to do it. It's unfair to try and expect things to start rolling just under the basis of letter of communication. You have to follow it up; you have to make that commitment to do that. And as far as I heard you say about there's paper trail on the record,

who's taking notes for today's meeting? Is there a record being created of this meeting and a statement being made by the Army Corps?

Hargrave: Yes.

Yellow Bird: Who is doing that?

Hargrave: Rick's doing that.

Yellow Bird: Well, he's not doing it now. We need a record, Rose, of verbatim transcription of this meeting so that we tribes will have something to refer to when we feel that the Corps is not doing their job. We can say we met with you; you said this on this date. We made a written record and there was a sign-up sheet out there for people (for tribal members) who want to be copied on everything dealing with the Master Manual. We need to, if we could please say if they haven't already sent a sign-up sheet around for the people who are here and a commitment from the Army Corps that you are going to send us a copy of the verbatim written records which we've already gotten a big gap in now because our recorder isn't here. You understand that unless there's a machine recording this...

Hargrave: Right. We do have. First of all...

Yellow Bird: Not going to have a verbatim...

Hargrave: First of all a couple of things, I would hope the meeting today was going to be more discussion.

Yellow Bird: That's what I'm trying to do.

Hargrave: I mean like we don't consider this a consultation meeting; we don't...our hope here was to have an informal type discussion. Let's talk about how we are going to improve communication. I don't think our intent here other than taking down meaningful comment and recording meaningful comment was to like a legal transcript or...

Yellow Bird: I hear what you are saying but your hope and your intent is one thing. But we are the representatives of sovereign nations who have come here in good faith, earnest good faith to work with the Army Corps on the Master Manual plan. Okay?

As Mary Lee, my friend, I haven't seen you in ages, how are you doing, was saying we are here to work in good faith and we are representing our tribes and we require a written record. On behalf of the Three Affiliated Tribes, I was instructed by my chairman, Mr. Tex Hall, to make that official request and would have done that at the get go this morning if I had known of the meeting

prior to this morning.

Johns: Pemina?

Yellow Bird: Yes.

Johns: First of all, we are going to apologize to you for getting the draft. You probably got the first draft of agenda, which was after that changed the date that shows on the agenda now. Tex's (inaudible) in Rapid City who actually sat down with us and created the idea for the (inaudible) and it wasn't to be a tribal consultation. It wasn't going to be a hearing.

Johns: What it was going to be was an orientation so that we could go through all of the documents that would be in the draft copy of the EIS and then from that point the tribal consultation would proceed from *after* this conference. So all this is is we are to hold meaningful dialog; interact with the tribes so that we can hear what the tribes have to say so that when we do have the *official* tribal consultation then it will be done in a way that the tribe will be comfortable with. So that's why we are holding this meeting now.

Yellow Bird: I'm clear on all of that, Mary Lee, I'm clear on it; I knew that my chairman had requested this be an orientation meeting and I know it's not a consultation. I'm not here to participate in a consultation; nonetheless on behalf of my tribe I am

asking for an official record of this meeting and I would like an answer. Are we going to have an official record?

McAllister: We are trying to record it so we don't miss any of the information that people are giving us.

Yellow Bird: Are we going to have a written record sent to all (inaudible)?

McAllister: From the recording, we are going to type it up and send it back out to the tribes.

Yellow Bird: To the tribes, very good. That's *all* I wanted to know.

Hargrave: We don't consider this is like taping official comments or anything is what I was trying to get across.

Well, maybe just kind of going back to where we were at here and we were going through pages 4 and 5 here. So this document throughout history... we have this comment period that goes until the end of February and again right now the workshops and the hearings are the way that the Corps of Engineers envisions them and I don't think that's the way it ought to be. I think in terms of the format, the location, the tribes hosting the workshops, I think a lot of those decisions I guess we'd like to speak to the tribes kind of tell us what they want. Or maybe some of the tribes would actually host the workshop. The same way

any materials we develop; we are developing and from the Corps of Engineers perspective and it may not be what the tribes want; they might want to see it from the tribal perspective. So I guess what I was hoping our discussion here too is that we talk about the best way to get the workshops, the hearings, and the official tribal counter. It's the way that the tribes want it as opposed to the way we would lay it out.

So the comment period can go on until February. Then schedule-wise we plan to get a final EIS out in May 2002. This is going to be a tremendous challenge. And that final Environmental Impact Statement is going to have as to what the plan is. Then that will be followed by a Record of Decision (ROD) in October 2002. Then we will do our Annual Operating Plan (AOP) and the new plan (new Water Management Plan will be implemented in March 2003. That date is not some artificial date that the Corps dreamed up; our current operations are according to the Endangered Species Opinion that we got from the Fish and Wildlife Service are only good until 2003. Then we are in violation of the Endangered Species Act so that's what is kind of driving that date.

Borland: I have a question, if I may. I heard it said you are (inaudible) does that extend through (inaudible) agenda. Three days?

Hargrave: Right, we don't consider this to be...

Borland: Well, on your agenda on September 14 states that “Consultation with Tribes on the Annual Operating Plan?”

Hargrave: Okay, that is different from the Master Manual. That is different. Every year, you know, we have the Master Manual that kind of lays out the guidelines for how we operate the dam but then every year the Corps does an Annual Operating Plan that says... that kind of tells how we are going to manage the dam that year to reflect the water conditions of that year. So that’s what that’s about.

Borland: I guess I’d like to introduce myself. My name is Greg Borland; I’m Chairman of the Cheyenne River Sioux Tribe and I’d like to take you on a... just a little journey through time (inaudible) actually a little over ten years ago.

A little over ten years ago there was a hearing convened before the Congress of the subcommittee of waters and then the Congressman Tim Johnson invited me on behalf of all the tribes in the region to testify on the Corps mismanagement of the river system and specifically to comment on the Master Manual—the lack of consultation with tribes and tribes, of course, these consist of roughly 15 tribes that have a lot of shoreline along the river. At that particular hearing in Washington, DC, where the Corps testified and were questioned repeatedly by Congress before admitting fully, even the guys that were testifying, at that particular time it was the Assistant Secretary (inaudible) Corps that the Master Manual was not only outdated but in many regards was unused. And they also

admitted that they had little if any contact at all with the tribes that it traditionally since the dams had been created the Corps of Engineers had not really consulted or even visited with the tribes.

In our reservation Cheyenne River has one of the largest shorelines on Lake Oahe. We also gave up the most land of anybody building (inaudible). When I became chairman—now you've got to keep in mind this was March 1991—I became chairman in October 1990, to our knowledge nobody can ever remember ever having a single meeting with the Corps. Nobody! The elders—nobody. Nobody had ever seen a Corps person. Nobody even knew what they looked like. In addition, it was the first time that many of our people ever even heard of the Master Manual that this was this big book that apparently had every acre of land in it and some of it's been designated as recreation area, etc. Also the Corps of Engineers absolutely infringed upon our sovereignty by establishing one single record and then turning around and leased that out to the State of South Dakota. That was at (inaudible) City. Never ever consulted with us by... never said do you guys want to lease out or run this recreation area; absolutely looked right passed us... slap in our face with an insult. (Inaudible) insulted the Corps right back at the hearing, I made the Congress aware. The Corps of Engineers admitted at that particular time that the Master Manual needed tremendous revision but they kept a consistent argument that their job was to basically there to let water in and out of those dams; creating a little hydroelectric power but that was a little afterthought. But essentially to maintain the dam.

The Corps had absolutely *no* interest in (inaudible, noise) records in the environmental protection of the environment, the protection of cultural preservation, sights. That has never been on the Corps plate. The only reason is the Corps had even began to look at this is because of Congressional pressure and influence and tribal pressure and influence. The Corps itself has told us repeatedly that the Native American graves protection act does not apply to them; that they were somehow free from it but that they would cooperate (inaudible) what we have experienced. For the last (inaudible) years it's been an on again/off again relationship. We have tried to work closely with the Corps, especially in our mitigation law to ensure that things would happen. Even in mitigation we watched the EIS process seemingly flounder because some of the concerns that we have with the (inaudible) EIS especially in terms of all the irrigation, all of the pollutants that have been dumped on the land that are being irrigated especially on non-Indian land that we believe there may be some potential problems with water sheds and a lot of the EIS (inaudible) reflected.

Not to mention the fact that our river had been dammed up for a lot of years and now folks are worrying about the sturgeon. They are worrying about paddlefish and different things. Well let me tell you this, those species they should have worried about them from day one. It's only because of folks like the Sierra Club; it's only because of tribal and Congressional mandate that anyone has even taken this to heart.

I see the Corps effort as being one of being forced into doing things. It's like a shotgun wedding. Right after, it was kind of ironic because nobody had ever seen a Corps official at Cheyenne River. Within a month after the hearing in Washington, DC, Cheyenne River was selected for a Corps visit and all of a sudden we have all these guys with big fancy Army suits that come marching in there one day and the first thing they said is, "What can we do for you? What can we do for you? We want to give you money; we want a contract with you." Of course, we said well, yeah, it's a good idea but you folks should have been out here years ago.

It was also the first time we had ever seen the Master Manual and it was the first time they brought these big giant books, I remember they had blue covers. It was a little more that we could absorb in a single day. But what was ironic, even further, is even though they came to Cheyenne River because I testified against the Corps they didn't go to Standing Rock, they didn't go any place else; they came there to try to appease us and try to pay us off. And we kept up the fight, kept up the argument, I notified all the other tribes and eventually we were assigned, Dave Baker, who is an Indian liaison. But Dave was only able to deliver our messages back or deliver messages from the Corps. Again, we feel in Indian country like this has been a shotgun wedding. One side really doesn't want to be partner to this wedding. The other side has to be partner. Why, because this was our land. This *is* our land. This is our water. Our people drink

this water; people bath in this water; people swim in this water. Our people here need our their crops with this water. This is our land long before you guys ever came here—long before you ever decided to build these miserable series of dams.

I'm going to tell you something. I was born and raised on a ranch. I don't know who the fools were back in the 1940s and '50s that planned these dams but our land, you got a big old draw, put all the little dams up high on the draw—the big dams downstream. Take a look at this map. You've got Fort Peck carrying 18.7 million acre-feet, Garrison 23.8, Oahe 23.1. If I was one of these terrorists and I decided to do some real damage—see what I'm saying. Take out Fort Peck you're just took out the entire river system. Why not build the little ones upstream; every rancher in the country knows that's how you build dams. If you are going to put three dams on the draw, you put the little ones up high, the big one down low. If the little one blows up it doesn't wipe them all out. Is that not correct, Dennis? Is that how we build dams?

Dennis: Yeah.

Borland: And so you took our best land and I'll tell you why you did it and the record is very clear. You did it because that was the least amount of damage the way that the United States government seen it to population center. You can create all these million acres feet dams—big giant dams and have the least amount impact.

With just the impact. Turns out 4,420 acres of my people's land; the best land—the river bottom. It's where all of our cattle would graze in the winter and have protection. I could stand here and tell you horror stories what has happened since then. Okay?

Yet, you put these dams above places like Pierre, South Dakota, above places like Bismarck. Since you couldn't replace these good folks out here in Bismarck, so you wouldn't force *them* to move up on the pole when you're ready. And they've been drawing this river belt. But my people were insignificant and then after these dams were built and flooded, then to add insult to injury, we never received any of that hydroelectric power that we were promised and we were totally forgotten. And we watched our burial sites wash away; miles of shoreline washed away. We watched scavengers (inaudible) come to our land and literally steal our (inaudible) on both sides of the river and the Corps did absolutely nothing. Nothing to stop it! Absolutely nothing.

And it wasn't until Tim Johnson, the number of Congressmen said there is something really wrong here and, of course, they were in a fight with the downstream navigation space versus the upstream recreation space. That the tribes were even invited to the table—that we were invited to the shotgun wedding.

So you understand, these good people here, these tribal leaders... we are a little

bit confused at times because we've come to the table, we've offered ourselves but we've offered our comments. We have a rich history behind us but we also have a terrible history because we have watched our land become inundated; we've watched and we've lost a lot. And we feel that you as the Corps of Engineers have got to join us either as a willing participant and a partner in this marriage, because this marriage I guarantee is not going to go away. You can replace Colonels every two years in the Omaha district. You can send them down their merry way; just when we start getting to know the group—he runs away. (Laughter.)

But I just want to let you know I'm speaking on behalf of those countless people, and especially many of my tribal members that have suffered great tragedy as a result of what has happened. I know we are stuck with it; I know we have to use it. It's like playing catch-up. We are talking about habitat. It has absolutely been devastated. We're talking about cultural preservation; this is not just that it's gone—it's washed away. It's at the bottom of the lake. So we are doing a lot of catch-up here. What is important is for us to catch this runaway freight train; we all have to run together. Can't have you guys lagging behind. We can't be in (inaudible) there's a meeting one day and there's not. Or we can't come to a meeting and be told that it's for consultation and it's not. I need a tape recorder; giving this really good speech and it's not being recorded. I know I can't remember a word of it. (Laughter.)

Let's have an impasse on behalf of the Cheyenne River Wapako Nation. I would hope that you will carry this message back to your leader in the Corps of Engineers and that you would make our message heard that we want a willing participant. We have yet to see that. The day the Congress backs off, our fear is you will back off. Thank you.

Yellow Bird: I want to thank the Chairman for his words. It's wonderful to come to meetings and there are powerful people who tell it like it is and I'm glad, Mr. Chairman, if you are leaving here, I believe they are recording it and I am in the process of writing a letter on behalf of Three Affiliated Tribes. My colleague and I are going to request copies that we can have them for our own use. The only thing I'd like to add to that is...

(End of Side 1, Tape 1)

Yellow Bird: ...tribes and there is; there are a lot of tribes; a lot of anger and a lot of emotion. One of the reasons for that (inaudible) as the Chairman said, you call a meeting and we come to it. We are sitting in earnest, good faith wanting to work with you; wanting to exercise our right. We are expecting the Army Corps to deal with us in good faith and to fulfill their trust responsibility to our sovereign nations. Then you asked us what we want; then we tell you; then it doesn't happen though. That's the pattern. That's why many of us come to meetings; people beat you up. That's why people are angry. And so I am going to ask you

all—open your ears! Open your hearts! Open your mind! With the good words Mr. Chairman asked you, any one of those words could apply to any one of our reservations and when we tell you what we want you have to listen and then you have to go to work to give it to us. If we say we want hearings on each of our reservations; that's what we want! Okay? We don't come here to be asked what do you want; to tell you what we want only to hear you guys say, "We can't do that." Okay?

Your life will be so much happier if you hear us when we speak. That's all I have to add to that.

Hargrave: And you know I think that's what we are here for. To hear *what the tribes want*. Particularly relative to the Master Manual and I appreciate the Chairman's comments and I'll give you another perspective on it. At the Corps of Engineers, and I can tell you the Northwestern Division of the Corps does not view this as the shotgun marriage. I can't speak for Washington but at least that's where we are at in history right now. I'm sure, I'm sure you are right on target with your comments there. Absolutely, we are one of the biggest bureaucracies—the Department of the Army is one of the biggest bureaucracies there is and the wheels are slow to move, but the wheels are moving and at least from the Northwest Division of the Corps of Engineers we *don't* view this as a shotgun marriage. We *are* committed to this.

Now on the other hand and this is a tremendous challenge we have here; we know construction of these dams had tremendous impact to the tribes; the Chairman on target but I think there was a total of 350,000 acres from the tribes and absolutely there was nothing called environmental justice when these dams were built. They were (inaudible) in their locations for exactly the reason he indicated. Well, at least that was one of the reasons. Those laws didn't exist at that time. The Nation certainly probably had a different perspective on the tribes at that time.

So here we are now. The dams were built; the consequences to the tribes have occurred. Most tribes... the compensation just probably was never there, but we are at a point now where we have to figure out what we are going to do now. This is just Rose, that if the tribes lose this opportunity on the Master Manual... This the Master Manual, and it's not the Master Plan for the Missouri River, it really is how we operate the dam but if the tribes lose this opportunity because it seems to me this is a tremendous opportunity for the tribes to get the big issue back on the table and I guess if we lose it, I think it's a tremendous loss to the Nation and an even greater loss to the tribes. I don't know what we can do to correct the sins of the past but I do know the Corps is committed to moving in the right direction here.

That being said, maybe would this be a good time to take a ten-minute break?

National Environmental Policy Act (NEPA) A.M.

Mackey: Clement Mackey, Santee Sioux Tribe, Santee, Nebraska.

Voice: Go ahead.

Provost: Tony Provost of the Omaha Tribe of Nebraska now.

Rousseau: Dennis Rousseau, Cheyenne River Sioux Tribe (inaudible).

Johns: I'm Mary Lee Johns; I work in the Army Corps of Engineers as a consultant to help them to do their tribal consultations. I'm also an enrolled member of the Cheyenne River Sioux Tribe.

Voice: (inaudible) Cheyenne River Sioux Tribe. I'm the administrative officer and I attended one of the Corps meetings in Rapid City (inaudible).

Elk Nation: I'm Carol Elk Nation, Cheyenne River Sioux Tribe. I'm (inaudible).

Manfager: Diane Manfager, Bureau of Indian tourist pilot, biologist, NEPA coordinator.

Borland: Greg Borland, Chairman of the Cheyenne River Sioux Tribe.

Patris: Mike Patris, (inaudible) Santee (inaudible).

(Inaudible) (Inaudible)

(Inaudible) (Inaudible)

Tieoto: Mick Tieoto, coordinator and archeologist.

Forest: Carl Forest at Fort Peck, Assiniboine and Sioux Tribes. Water resources.

Stas: Nick Stas, I'm with Western Area Power Administration (WAPA). I'm the Great Plains Region—I'm the regional (inaudible).

Olson: I'm Mike Olson, U.S. Fish and Wildlife Service here in Bismarck. I'm (inaudible) river coordinator.

Sapa: I'm Al Sapa, U.S. Fish and Wildlife Service in Bismarck. I'm field supervisor (inaudible).

Branson: Steve Branson, (inaudible) Fish and Wildlife Service here in Bismarck.

Alburn: (Inaudible) Alburn, Three Affiliated Tribes, I work on (inaudible); I'm a representative of my tribe. I'm not as related to it as Mary Ellen (inaudible) of our ancestry and also the preservation and protection of our historic and cultural sites.

McAllister: I'm Roy McAllister and I'm the technical coordinator for the Master Manual and I work on the EIS and so forth.

Nelson: Dave Nelson, I'm environmental representative for the Cheyenne River Sioux Tribe.

Hargrave: Thank you, everybody. I think I will talk very briefly here a little bit to cover EPA's territory since they can't be here today. But then I think we will, after some discussion there, turn it over to the Fish and Wildlife Service to talk about endangered species.

The Master Manual process is following NEPA, the National Environment Policy Act and just in the way of background, the National Environmental Policy Act (NEPA) is like the granddaddy environmental statute of them all. It was passed in the early '70s as many of the environmental statutes were and what NEPA does is set out a requirement where activity can affect the quality of the human environment. Federal agencies are required to do an Environmental Impact Statement (EIS) or an environmental analysis. Where there is potentially a significant impact to the quality of the human environment, NEPA says that you'll do an Environment Impact Statement (EIS) and that's what we have here on the Master Manual. We've been following the legal process.

This morning Fremont asked for copies of the Corps implementing rights for the National Environmental Policy Act (NEPA). I gave him his but we do have a few more copies of that and we can always get more if any folks here would like to have. These are the Corps regulations; it tells the Corps how we are supposed to implement the National Environmental Policy Act (NEPA). So if anybody wants it we do have some of those. Basically that's the process that we've been following. NEPA, one of the primary objectives of NEPA is full disclosure of impact. That's what we've been trying to achieve through the process here. So it's more of a, I guess, it's a procedural law that requires that you fully disclose what the environmental impacts are and that's what we are doing in the process.

The past year, particularly relative to how we address tribal issues in the Master Manual/EIS. We got a lot of feedback from the tribes when we put out the 1994 document and when we put out the 1998 document that we were not addressing tribal resources or fulfilling our trust responsibilities to address impact to those resources in the EIS process. So since 1998 we have been working very closely with Region 7 and Region 8 of the EPA and their tribal coordinators to make sure that we do a better job in the EIS of addressing tribal concerns, potential impact to the tribes and I think the document that you see now or the document that is going to be published here and will be out in a few weeks does a far better job of addressing tribal issues than any of the past Master Manual documents.

Just in the way of how EPA fits in here. EPA is the Federal agency who has actual

responsibility for the oversight of the National Environmental Policy Act (NEPA). So they kind of have oversight over how the Corps implements that law. The EPA also has a responsibility in Summary Section 309 actually the Clean Air Act.

Where EPA is going to rate this EIS and they will base their rating on two things. They will base it on first of all: are the alternatives presented in the document environmentally acceptable and then they will also this EIS on the quality of the document itself.

In 1994 and 1998 we heard very strongly from EPA that they didn't like the way and didn't think we adequately addressed the tribes in the Master Manual/EIS. So again since 1998 we've been working real closely with that.

In your folder that everybody has there you are going to see a few things. First of all, in terms of addressing tribal impact the EIS does address tribal impact by tribe for the 13 tribes that are located on the Missouri River along the mainstem system. We are going ahead and for the 13 resource areas that are in the EIS that we are addressing we are identifying the impact by tribe. In addition to that, we are in the main body of the EIS and then in addition to that we are including a Tribal Appendix to the EIS that will summarize what those impacts are. Also in the Tribal Appendix... we are trying to make the Tribal Appendix like a standalone document for easy reference for the tribes. So if you go to that appendix you'll have a pretty good summary of the tribal impacts and how we are addressing them.

Voice: You want to show it? Which part of the document?

Hargrave: Sure.

Voice: Your white pad.

Hargrave: Right, it looks like this. And you don't have the full Tribal Appendix here, by the way, in your handout. This is like the first 30 pages, I think, of the tribal appendix but if you look at it you'll see the table of contents of the Tribal Appendix. Should be under your white tab. This is the Tribal Appendix, about the first 30 pages of it.

Voice: In your Tribal Appendix what does the category Historic Properties signify? Because I see on every one of them, it says NA that that's not applicable or not available.

McAllister: The reason why it is not it's NA is that if we were to say that the sites that are adjacent to the Standing Rock Reservation, for example, or the concerns of the Standing Rock Tribe, that may not be completely correct because they may be Arikara sites; they may be Hidatsa sites; they may be some other tribal site and the real tribe past concern with that specific site may not be the tribe of the site it's adjacent to. So instead of trying to identify potential impacts to sites by reservation, we just elected not to try to separate it out. Because we don't know

which sites in the model that we run which ones are Arikara sites which ones are Hidatsa sites which ones are Standing Rock's ancestral sites and so forth.

Yellow: There's some problem of that though, Roy. If those sites are located within the exterior boundaries of Standing Rock (inaudible) rights they have a right to say something about them. Those are on core land within the exterior boundaries of their reservation; you have to consult with them loudly. Regardless of whether or not those tribes are associated with their tribe.

So are you telling me (inaudible) but did you mean to say the exact same thing?

Hargrave: I think you're...

Yellow: (Inaudible) there has been problems then. They've flat refused to consult with Bird: (inaudible). On sites that were none of those associated with a tribe but they're within their exterior boundaries. And this is... I'm glad you brought that up, because yes, the Army Corps must consult with them. That's their reservation land as well as...

Hargrave: Right, I don't know how much we are going to get into it now but another statute that...

Yellow: You haven't answered my question. Is that what you meant to say, sir.

Bird:

McAllister: I didn't say anything about consultation. I said as far as being able to set the analyzed sites. We did not go site-by-site; what we did with the model set up to identify like, for example, Lake Oahe all sites are lumped together that are at elevation 1643, let's say. So I do not know whether that site is an Arikara site or Hidatsa site; if it's on Standing Rock Reservation or somewhere else. We do not have a breakdown within the model to help us delineate which tribe it may be adjacent to.

Yellow (Inaudible.)

Bird:

McAllister: Right.

Yellow Okay, so how are you going to accurately convey the information to the individual

Bird: tribes that they have sites that are going to be negatively impacted or, what's the other term, beneficial impact?

McAllister: One thing we could have done, we could have done very easily because the project on Oahe site we can say that is on Lake Oahe... that what happens on Lake Oahe as a whole is the way that that specific tribe or reservation may have concerns for that (inaudible).

Yellow (Multiple voices) (Inaudible) lake-by-lake instead of reservation-by-reservation?

Bird:

McAllister: We have some that are lake-by-lake, yes.

Yellow Thank you.

Bird:

McAllister: Lake-by-lake. I think we can do it that way.

Yellow Are they in here?

Bird:

McAllister: We haven't finished that chapter yet. But other than that, yeah. (Inaudible)

Yellow So we try...making notes that if we want accurate information about the sites we

Bird: need to look at rather at a lake-by-lake graph because the reservation graphs are not going to either reflect...

McAllister: Again those are not final either, we can based on your comments to me right now, we can change that.

Hargrave: We can certainly put it by...

McAllister: That's an easy fix; extremely easy fix.

Yellow (Inaudible) lake-by-lake (inaudible) reservation, you are going to need some input

Bird: from tribes on these graphs because just looking at Three Affiliated it's inaccurate.

Hargrave: We weren't going to get into it here but the 106 issue.

Yellow Yes.

Bird:

Hargrave: I mean, (inaudible) good portion of the agenda.

Yellow (Multiple voices) ... Just wanted to clarify that point.

Bird:

Voice: (Inaudible) I'll save it (inaudible).

Hargrave: Okay.

Voice: Well, my question originally was partially answered but she covered what I was taught to say this morning.

Hargrave: Right and of course Omaha district is keeping it. We do have a database on the sites. We purposely in the EIS did not want to specifically identify sites. We didn't necessarily think that would a wise thing to do.

Yellow Rose, could we get a copy of that database? (Inaudible) Three Affiliated Tribes.

Bird: I've been asking for one of those for over a year now. Sorry, Becky. Everybody

keeps telling me it's not done yet. Three Affiliated Tribes would like a copy of that database. As well as all the other tribes (inaudible). The ones that we have (inaudible). Can we have copies of what you have done so far? (Inaudible)

Becky: I'll ask.

Yellow Okay.

Bird:

Hargrave: And, Becky, what's the status of the GIS database?

Becky: (Inaudible)

Hargrave: Okay.

Becky: (Inaudible)

Hargrave: Is the GIS database available?

Becky: Yes, that has been provided.

Hargrave: Great, do the tribes represented here, do you know if you guys all have that GIS database?

Voice: I went to a private contractor and had (inaudible) tribes database built, however, the question I have is GIS database using (inaudible) and so forth satellite or are you authorized by the tribes to get that information? Because it took me a long time to get our database built and we are kind of stingy with it because it's pretty complex. I don't know if there is out there making a database without the Omaha Tribal Council's permission for that data.

Voice: The only guide (inaudible) GIS database (inaudible) cultural session for the Omaha (inaudible).

Voice: So the Omaha Tribe would be within that?

Voice: Because we are closest to the district than anybody.

Voice: Do you have Corps of Engineers (inaudible)? (Totally inaudible)

Voice: As far as I know, we have cultural sites (inaudible) or the Corps of Engineers being willing to (inaudible).

Voice: We don't have a reservoir around our (inaudible). Closest point is Gavins Point Dam.

Hargrave: I guess what I'm hearing is our GIS database doesn't include? Okay.

Voice: Although historically we were in some locations (inaudible). (Multiple voices.)

Hargrave: Yeah, we are going to give everybody, at the end, we are going to give everybody the sign-up sheet.

So, I guess, just kind of moving on, what you are getting here in your notebook is a *piece* of the Tribal Appendix. It's not the whole Tribal Appendix but it kind of starts to give you a feel for how we are addressing tribal impact in the EIS.

The other thing that's not in here is, I think, at the Corps we recognize that we don't capture tribal issues well. So what we are including in this Tribal Appendix also is a compendium; it's a collection of every comment that the tribes have ever submitted on the Master Manual/EIS since the whole process was started. So for easy reference the tribes will have that to go back to so they can review what comments have been submitted on previous EISs. Look to see what kind of job we did address them. Those comments in the EIS.

Yellow Rose? Could you explain, I'm looking at one of these...

Bird:

Hargrave: Oh, sure, one of the charts?

Yellow At the charts, yeah. And you have numbers in there and some have minuses and

Bird: some have black and some have gray. I notice that light gray shading denotes a beneficial and black denotes an adverse affect. But what do the numbers mean exactly?

Hargrave: Okay and I think we were going to have Roy get into that; we could take the time and go into it now but I think that was tomorrow.

Yellow: Tomorrow? Okay, tomorrow. All right.

Bird:

Hargrave: We were going to have Roy go into those charts, talk about how we evaluated the impact; what we are measuring. Sometimes we are using actual data; sometimes we are using indices to measure some of the impact; kind of describe how the analysis was done. But those are just kind of summary tables that we included so folks could get a look at what the impact tables are going to look at and of course the impacts are addressed in the main body of the EIS.

So that's kind of a synopsis of maybe the Tribal Appendix. We also tried to in the Tribal Appendix hit on what the Corps responsibilities are relative to the tribes.

We identified the consultation history that we have so far with the tribes and then also in the Tribal Appendix, and I really hope everybody will take a look at this.

We are laying out what we see as the consultation process with the tribes. We tried to marry it up with the NEPA process so that at critical points in the NEPA process (for example, at the time we go to identify a selected alternative, we think

a Commander from the Corps of Engineers needs to come out here and meet with the Tribal Chairmen). The same way when we move forward like to a Record of Decision (ROD). We think that we need to have a Commander out here to meet with the tribe. So we tried to pick key points in the process where we thought specifically there had to be high-level involvement here. We also at least identified in the process some sort of a process for unresolved issues. Particularly in terms of water rights issue, in terms of treaty issues. You know, I don't think we are going to get them solved in Omaha, Nebraska. I think it's going to take some Washington level involvement. So we are trying to at least allude to a process where issues can be elevated through the Assistant Secretary's office. In trying to account for that in the process too.

So the consultation history is in there and the consultation, the way that we view the process and we are open to that is also in the Tribal Appendix. In addition to that, this is a lot of this is working with the EPA throughout the document this time we tried definitely to be more sensitive to tribal issues; to recognize that the tribes have a special relationship with the Corps that the States and the United States that the States don't have. And so in the document we definitely changed things to recognize that that's a relationship with the tribes.

From this is just my perspective; I think we have made leaps and bounds here from where we were in '94 and where we were in '98. We'll continue; again, we evolve. We'll continue to get better, I think, as we get input from the tribes and

move forward.

So with that, I'm going to turn it over to the Fish and Wildlife Service now. In addition to the National Environmental Policy Act (NEPA) the other major statute that we are trying to follow here and to comply with very hard is the Endangered Species Act (ESA) and we'll turn over the microphone.

Yellow Bird: Can I say something? A little announcement, I had a call from Marjorie Milot, on the Advisory Council (inaudible) and she asked me to announce and to ask all the tribal government to put this date on their calendar: October 2, 1:00 p.m. at the Holiday Inn, Fort Pierre, South Dakota. Advisory Council has created a sub-committee of three of its members to come out to the Northern Plains and take testimony from our Chairs or Elders and other individuals on this date. They want to hear from us regarding the problems we are experiencing. There are cultural resources on the Missouri River. I'm also told that the Executive Director of the National Historic Trust will be in attendance at this hearing and will be on hand to testify in behalf of the tribes.

Voice: What's that location?

Yellow Bird: Fort Pierre, South Dakota. This is something that Lower Brule Sioux Tribe have been working really hard on and we all have Scott Jones to thank for this extraordinary occurrence. Advisory Council has gone to great lengths to create

the sub-committee. The city

(End of Tape 2)

Tape # 3

September 12, 2001 1:30 P.M. U.S. Field and Wildlife Service

September 12, 2001 U.S. Fish & Wildlife Service – Mike Olson

September 18, 2001 Corps of Engineers - Roy McAllister

Sapa: Tribes along its banks not only to the Fish & Wildlife within its banks. I have a two-minute video that Lex Haymes from the North Dakota Game & Fish Department shot a year or two ago relative to the pallid sturgeon and I think it's well done and I want to show it here real briefly and then certainly take any and all questions.

Video: That's why the U.S. Fish & Wildlife Service, North Dakota Game and Fish Department, the Montana Department of Fish, Wildlife and Parks came together in August to release new sturgeon into the river near Williston. It's hoped these fish will establish a new active pallid population. Senator Ken Carmide, Representative Earl Palmaroy, Game and Fish Director Dean Hilderbrand and Montana Fishery Chief Larry Peterman were selected to release of the largest sturgeon. Seven hundred fifty smaller younger fish were released by fish biologists. These fish are a study group equipped with radio tracking devices. We can follow their movements and learn what the fish need to survive. Pallid sturgeon are the oldest living thing in the river; if we lose them we lose of the river's sole. We lose an incredible determination to live 150 million years old.

We will have to make changes on how we use the river but isn't it worth it to preserve the oldest citizen of the Missouri? (Inaudible) make a comeback.

Sapa: That was a piece that Lex Haymes did for the Game and Fish a year or two ago. I thought it really kind of summarized what our work is about when we are trying to protect this fish.

Are there any questions, I know we are late in the day and probably the only thing standing between you getting out of here?

Voice: I just have one quick question. You were speaking about doing some testings on the lower part of the river. Now that would affect my tribal people down there because we are in the Northeast corner of Nebraska where our nearest reservoir to the north is Gavins Point to the south by (inaudible) so you are talking a long strip of river messed with by reservoirs. Now how will that affect the Omaha people and will we be a part of any consultation as far as activities going on?

Sapa: What the Fish and Wildlife Service has recommended to the lower 750 miles— from Gavins Point Dam to the mouth is to restore 20% of the shallow slow water habitat that was lost and couple that with some changes that in flows out of Gavins Point Dam which would be more appropriate for native river fish species like the pallid sturgeon. You have a page in there?

Olson: Yeah, there's a page in the summary document of Gavins Point—page 11. And what that talks about on the graphic there with the big yellow bar in front of it is ... what the Fish and Wildlife Service has recommended, that's the rise there in May and June and the fall in the late summer months down to oh, 25-kcfs (thousand cubic feet per second) out of the dam. Will there be impact to your tribe? That's a question that I think the Corps is trying to capture in their Tribal Appendix. If you look at your tribal charts relative to the different uses on the river there should be some sort of an assessment of what it means to your particular tribe.

Voice: Well, it was in here and there was a couple in it that weren't addressed by (inaudible) I'm sure the individual was aware of them and they probably will be addressed but as far as being a part of it we would like to be from the beginning and not 200 years later when it's all checked out and oh, he's more of a consultantee. We want to be in from the get-go still. (Inaudible.)

Hargrave: You know, and we really haven't got into the consultation yet but the RDEIS the document presents six alternatives and four of those alternatives that we are looking at the impacts of, we haven't identified the a third alternative in the RDEIS. But four of the six alternatives that we are looking at includes the increase at spring release and the decrease in summer release from Gavins Point Dam and we tried throughout the EIS document to look at what the impact of those are and I guess what I say is that the part of our government-to-government

consultation with the Omaha tribe—we absolutely need to hear what the tribe thinks of the changes and releases from Gavins Point.

Olson: Not only the Omaha Tribe but from Gavins Point down would be Region 7 and there's nine tribes that would be affected by the lower... we're the lower river tribe.

Hargrave: Tribe, exactly. That goes all the way to the Kickapoo and the Sac and Fox down the river. Not only that when we change the releases from Gavins Point Dam, it changes the operation of the system all the way up. If you are releasing more in the spring, you have impacts on the reservoirs all the way up the river. By the same token if you are not releasing in the summer and you are holding back the flows behind the dam that impacts *all* the tribes along the Missouri River. So the change in Gavins' releases certainly the downstream tribes would be most concerned but it affects the system *all the way up*. So the tribes all along the river should be looking at the Gavins' releases real hard.

Sapa: Our job in this whole process is almost as a subcontractor dealing with this Endangered Species law that Congress passes 28 years ago. The Corps asked us, the agency that has these species under our mandates, how should they operate to protect these species or actually to keep from jeopardizing their continued existence. We provided that recommendation in this biological opinion. Now the Corps is taking this next step and looking at Tribal impacts, flood control,

irrigation, drinking water, navigation, hydropower and they are taking the impacts to all those other uses and comparing them to what we recommended for endangered species and that's what this next six months process is all about.

Maybe, unless I just bastardized that too badly. That's where we are at.

Hargrave: That's exactly right. Just talking about the Missouri River hydrograph and I know I'm going to be *way* over simplistic here. Typically in the Missouri River, before the dams were put in, and Mike talked about it... it just illustrates it better maybe with a picture. But what happened was, you got the fine snow pack and there was the peak and then later on, later in the early summer, mid-summer you got the full impact of the mountain snow pack melting off into the Missouri River. So there was kind of another... and in the summertime as the tributaries to the Missouri River dried up you had a situation in the summer months where the flows were lower. When we built the dam and we put the dams in place—you know one of the reasons the dams were put in place was because those spring flows caused a lot of flooding problems. So when the dams were built, we essentially flattened things out and kind of distributed the distribution of this heap of water over the course of the year. So the hydrograph maybe looks a little bit something more like this—cut off. And we flattened out the hydrograph of the Missouri River when we built the dam. And so the fish that had adapted to the peaks and the lows—that's not the river that they live in anymore. So real basically that's it.

Sapa: And what we recommended is just to point out this and that is that the Fish and Wildlife Service hasn't recommended that we go back to this type of hydrograph but something as represented by—it goes up a little bit more than current operation. We think that that will provide some (inaudible) these species have come down more in summer than currently operated.

Species can adapt and the science...this is a new science that is relatively the cutting edge. What do those river species need to survive? There's documentation out that that says it replaced 20-30% of the historic hydrograph, it'll keep those species alive and at least sustaining themselves. Now that doesn't mean you have to go back to the 100%; there's significant tradeoffs to the other uses if you go back this far but species may not need that either and what the scientific literature tells us is that it provides 20-30% back into this system—those species will survive and sustain themselves.

Hargrave: Maybe add one more thing, the flow piece of this—the Master Manual is all about flow. But the whole picture on the Missouri River endangered species is much broader than flows. It's about habitat; it's about hatcheries; it's about monitoring and evaluation and it's about adaptive management. So the flow piece of this, we're getting the NEPA coverage for it through the Master Manual. For the Fort Peck flows and Gavins flows, but the other pieces, the habitat, the hatcheries, all of that...the Corps is looking at how we are going to implement those outside of the Master Manual. Some of those actions are going to have a separate EIS

devoted just to that particular action. It's going to be outside the Master Manual. So what we are focusing on in the Master Manual is the flow piece, particularly the Fort Peck flows and the Gavins flows.

Olson: I think it's an important point because other than habitat is the things Roger addressed for listing endangered species, there was more than habitat. The short tape, of course, didn't cover issues such as contaminants, bioaccumulators, pesticides stuff, buildup, endocrine disruptors, I mean, there's a lot of factors as Rose pointed out that this is addressing just one of these to help with the recovery. But I think it's important to point out that there are a lot of other things and it goes along with the pallid being an indicator of the health of the river as well. If we don't address the health of the river it may affect the humans as well in the long term.

Sapa: I think that is why the Corps kind of beefed up their water quality component of the EIS as they recognized that issue. You have a question?

Voice: Raise my question of the ecology; (inaudible).

Sapa: Recommendations for Lake Oahe?

Voice: Exactly!

Sapa: Well, Lake Oahe is really covered under this inter-system on balancing. Fort Peck, Sakakawea and Oahe are the three reservoirs that on page 12, what we talked about one year out of three Oahe would be slightly higher; one year out of three it would be about what you see under the current Master Manual in one year out of three it would be slightly lower. What that would provide is a scouring of some of the beaches along the edge of Lake Oahe that provides... keeps the rush, thistle and Nicosia and some of those plants from being established which would be good nesting beaches for these birds but it will also provide—the year it's flooded—it provides game fish habitat for the Walleyes and the Northerns and the Perch that under the way it's operated now it isn't maximized.

Voice: Okay, I have problem with that because of the fact of all the erosion, the sedimentation, the silt buildup and two of the major rivers we have flowing. We have Lake Oahe on the east; Cheyenne River on the south and Muro River (inaudible). Now I could take you down there and you could put some waders on and you can walk out into all the silt you want to walk into and that's based on the current management of the reservoir. You'll have a level up here when we get ice on, all that sediment is sitting right in the mouth of all those flows. I guess actually move the mouth more or less (inaudible). In any other part we are looking into real seriously right now is mining waste. Just basically sitting in the mouth of Cheyenne River and it's moving closer and closer to our intake of drinking water.

Sapa: Well those are all great issues. The Muro and the Cheyenne are going to continue to provide sediment into Lake Oahe. The question becomes how is the Corps going to address that under the Master Manual. The Master Manual is about storage and about flows; so those are the two things that they really address in this manual and I think there are questions that we have to ask ourselves but maybe there's just a different process where we have to address mining waste and the issue with sedimentation. The Congressional Delegations in South Dakota and North Dakota have seemed to have jumped out of a lot of this sedimentation issue and they promote a different initiatives in the last two years. I know that Daschle and Johnson have talked about implementing some more best management practices up in the water sheds on the Bad River and on the Cheyenne River arm to see if they can't reduce by even 10 or 20% some of that sedimentation from reaching the Lake or reaching the city of Pierre where that delta is being built up. So there are other programs that I think address sedimentation but it's really a tough issue to get your arms around through the Master Manual.

Hargrave: Right. The sedimentation on the Missouri River lakes is a huge issue. In the way of background, all these reservoirs were designed with a certain lifespan in mind. And eventually all reservoirs fill in. The Missouri River reservoirs are no different. What's happened is in some of the areas where the sedimentation is occurring—there is infrastructure there now. And at the time the dams were built or were planned that infrastructure wasn't envisioned; it wasn't foreseen. So what we are having is the dams are filling in pretty much as they were; the lakes are

filling in at the rate that they were expected to fill in. Obviously, for the three lower lakes that have a lot less volume than the upper three lakes the filling in is going to occur at a faster rate. And I think, Roy, correct me if I am wrong, in terms of lifespan of the reservoirs, I think Fort Peck is around a 1000 years...800 and some years. And I think Lewis and Clark, the smallest of the lakes, has a lifespan of about 125 years. So the lakes still have a lot of longevity in them but sedimentation is a problem. It's going to continue to be a problem. A global solution on the Missouri River to the sedimentation issue—it's astronomical. It's almost unfathomable how you would ever deal with it for the whole Missouri River Mainstem System.

So most of the solutions we are looking at in terms of the sedimentation, they are either relocation of infrastructure; in the case of Fort Pierre, of course, buying out the homes that are there or else there are local type solutions. For example, building diversions near intakes so that the sedimentation doesn't occur near the intake. But they are all local type solutions; they are not global type solutions to the problem.

Yes?

Voice: Would this be possibly addressed in your Annual Operating Plan?

Hargrave: You know, we do look at sedimentations in the manual. Roy, do you want to say

anything about that?

McAllister: The main thing we say about sedimentation is that the processes that affect sedimentation on the Mainstem itself—the Mainstem of the Missouri River—are related to, of course, changes of flows. I flows, most people recognizes tend to cause erosion and that that water slows down that the lower flows tend to result in sedimentation being deposited out and also reduces the amount of erosion that occurs in upstream river reach (inaudible) occurs. But when there's tributaries coming in, those tributaries carry sediments in based on the hydrology of those basins. For example, because a rainstorm that occurs out in the Rapid City area, the Cheyenne River arm is going to send more water into Lake Oahe and in turn carry more sediments in. And so it's indirectly related to how the systems operate, now I can understand a gentlemen's point why don't we lower the lake and raise the stuff but it may affect a pattern of where that sediment settles out and that's where his concern is—it's settling out in the neighborhood of the intake. But again, trying to forecast where that happens when you are doing a study like the Master Manual addressing the impacts of 1800 miles of the Missouri River and 1300 miles of the Mississippi River, we don't get down to those nitty gritty, what happens to my intakes—specific intakes type thing.

I think what would be required there is some sort of mini-study to look at what's been the pattern of the sediment coming into the lake and what has happened as the lake has gone up and down. We've been through several drought years now

through different periods; did that that positional pattern change through those periods? That takes a really focused study to looking at that specific issue. So Master Manual is not going to address the intake problems for the Cheyenne River Tribes because it's not that it is a small problem it's just that we can't do focus studies for that type of fine point. There are other Corps authorities to get in and look at those types of issues and that's why like Senator Daschle and Representative Johnson are working with the Omaha district to look at what sedimentation studies to be done. What we've done to move these deltas from where they are creating problems and so I think that's the average goal for those type things. The operation of the system, I don't think, long-term is going to have that in effect that we can begin to describe what's going to happen. I don't know how to approach it.

Voice: If you get into, let's say the situation with (inaudible) will fluctuate, one year it's up here where sediment is; next you've got to drop down; well, if they get a gully washer of a rain out in the hills and you are looking at the (inaudible) and you're looking the Cheyenne River, starts in Wyoming, and all the tributaries attached to that and you dropping it down while it's moving it out. So it's a step—it's a stair step. So at your third year and fourth year when you're bringing it back up again with pushing that sediment out here because the lake's up; next it's just a little bit of stair stepping itself out.

McAllister: The lakes, the way that the intended operation would be is they change the level of

the lakes by about three feet. Maybe some years the operation may mean a five foot difference. But generally the pattern is not going to be a dramatic difference but again, quite a little testivity of you intake, you know, what's happening to that specific location. Maybe it is it may be very, very sensitive to those changes. During a gully washer when the lake's down carry those sediments as far into Lake Oahe as you can get them and then when the lake comes back up you get a reprieve for several years until it kind of builds up again and then you get another gully washer when the lake goes down. So maybe it might even to your benefit to that third year when the lake's down those sediments instead of staying near the shoreline where your intake is, they may be flushed further down into the main body of the lake.

Voice: Which creates the other problem which we're having. Not only the (inaudible). Knowing the fact that there is (inaudible) contamination particularly mercury. All that's doing is moving it out further down into a deeper channel and we've been doing studies on various fish species in the (inaudible) and (inaudible). Now in moving that down to the sediment (inaudible) further out to where, you know, what you're doing is your moving your fish species out further and further. Plus then when they're coming back up in the base; spawn or whatever else then they are in sediment—in contaminated sediment. So you are increasing the risk of them getting more of, let's say, mercury because we know it's going to take more of 100 years to mine that and it's going to take a lot longer than that to get that sediment unless you dredge the whole system out of it.

Olson: Our basic conclusion when it comes to this fish less contamination issue is that there's really not much we can do with the operation system because typically when you do go through a drought the lake's going to drop and as they drop get the wind wave action on those sediments that are already sitting there in that delta and they are going to come up there and re-suspend the sediments. (Inaudible) when the sediments are re-suspended that's when the heavy metals move into the solution in the water. The fish don't typically pick the contaminant of the heavy metals out of the sediment; they take it out of the water column as they bring the water to their gills and feed and so forth. And again, the chain of... a small fish may have a little bit of it; not all their food all has it in it so whatever they were eating too is haphazard so there is a lot of factors go into that concentration of that heavy metal in there (inaudible). But I don't think typically most of the fish are not bottom feeders like the pallid sturgeon is. And so they are getting their heavy metal that's accumulated in their bodies through the water column and so when the lakes come down and you are at the height; your minds are already clicking and you are right—if we pull the lake down pretty deeply we do put the water in contact with that sediment and re-suspend it too. So... it's something that's there that no matter what it's going to happen and you are going to re-suspend it. I don't think the operation that a bioaccumulation process is not something that can be controlled by the operation system. The control of that problem is getting back to the source of the contaminant to begin with and trying to keep that contaminant from getting into the lake and...

Voice: You (inaudible) down then? (Chuckle) (Inaudible) that?

Olson: They really know mining company's have—(inaudible) that dam. I don't know what the long-term solution that is. We felt that and as you read the water quality section in the report and I can't remember what it said exactly about how in the tribal section of the water quality write-up was said, I think we intended to address more in the water quality write-up those things that there were differences that occurred when we operated the system and whereas the general water quality write-up, the tables that are in there, they discuss all the problems and some of the things operation system doesn't affect; there's other things that some operations does affect. Then we got the tribal write-ups that help focus their review of the material and so forth. We identified what areas felt would be different under the operations. So that you can say that's good or bad for my tribe by seeing that water quality issue highlighted as potentially being this you are primarily concerned about.

Borland: Well, highlighted or not, the fact remains that way back when you first started doing this process and it doesn't mention anywhere in the Master Manual the cultural tide, the spiritual tide that we have with the water. See that... we had to issue a warning on our reservation because of the levels of mercury we were showing in different fish species. Now I don't know who it was but the Corps didn't want us to issue that; they said well wait a minute, we are not going to

support that. So we figure we don't tell people because we have a lot of people that fish for subsistence all along the river system and if we don't let them know then we are putting them at a higher risk as far as intake of the fish that may or may not be contaminated. There are so many factors that aren't addressed in the Master Manual about the tribes and cultural and historical use of the river system by tribes.

Olson: And in my opinion, I think you might find the Commander's opinion; you did the right thing by listing these. That's your responsibility as a regulatory group for that portion of the lake, to assure that your constituents are protected or aware of the issues and you did the right thing by listing them. I'm surprised when you said the Corps would say don't list this but that's maybe one person that's you talked to at the project or something. Yeah, you did the right thing.

Hargrave: Okay, I think if it's okay with the group, we do have an opportunity since some of our Federal partners couldn't be here to maybe wrap things up by closing this.

(End of side 1, tape #3)

Voice: I look through here and I see the closest one would be (inaudible) Pierre for us.

Hargrave: And that's what we need to hear. We need to hear *where* the tribes want them, *when* they want them and *what materials the tribes want to see*. Otherwise, it's

going to be all whatever the Federal government puts together, so...

Voice: Regardless you are going to get to a situation where down the road and then you're going to have privacy. You may have a reoccupation down at Pierre. (Laughter.)

Hargrave: Okay.

Voice: (Inaudible) looks like. What special (inaudible). (Inaudible) involved (inaudible).

Hargrave: Great.

Voice: (Inaudible) tomorrow (inaudible).

Hargrave: Oh, that's great, in fact we had told that (inaudible) more of a discussion type.

Yellow Can I ask a question? The gentlemen from Cheyenne River, just to clarify, did I

Bird: hear you say that the water there is so toxic you are telling your people not to use it?

Borland: What we have done is there are levels of mercury showing up in fish flesh.

Yellow Then not to eat the fish?

Bird:

Borland: We advised them as they can reduce the consumption.

Yellow And your tribe approached the Corps on that matter and they said they didn't want

Bird: to support you in that finding?

Borland: They didn't want us posting signs.

Yellow For crying out loud!

Bird:

Borland: We went and did it anyway but...

Yellow Well, yeah!

Bird:

Borland: Because in some of the areas where we put the signs up was considered a taken area but that was the closest place that like boats inputting; there's a docking area so that's where we put the signs and we put them in all the communities.

Yellow You know what, our tribal people that work on building ours (inaudible) Cheyenne

Bird: River? And could we have you network with our tribal people because we are in the same boat, you know? Even the occupation of in and out water and if Army Corps said they wouldn't support you on that; they didn't want you to put up signs. That's really (inaudible).

Olson: Sounds like maybe the issue wasn't so much they didn't want you to put out notifying the public there's a problem as what signs you were putting up and where those signs were going. Is that right or is it they didn't like you...?

Borland: They want me to put the signs on areas where we felt it were a necessity such as next to a boating dock. You've got fishermen coming from all over the country coming in there and if we don't advise that there is a potential problem with large consumption of fish that may contain mercury. What we advised them was pregnant women, children, elderly should reduce their consumption.

McAllister: North Dakota has done that up on Lake Sakakawea too. And in fact, that specific issue is identified the water quality analysis that is an issue, however, there's nothing we can do. The lake's going to fluctuate over time and they're going to put that sediment suspend them in the water column and have the metal get into the solution and the fish are going to get and there's nothing we can do right now to take care of the problem but I just can't imagine someone saying that other than... Don't take me wrong when I say this but we put the lakes there for various reasons and if the State of South Dakota and the tribes that want people to come and use them for recreation and get the advantages of recreation and so forth. It's not the Corps that goes out and tries to sell the recreation value per se; we do have recreation facilities they are going to be wrong. But I just can't imagine us saying don't put up the signs when you have a dangerous situation potentially. That astounds us though.

Hargrave: The other thing we didn't mention is, and this is not part of the Master Manual, but the Corps has a hazard toxic and radioactive waste program. Some of the, of course, ultimately getting to the source of those mining wastes and stopping it—it's extremely important. I know particularly in terms of the home state mining action there is an action under a different program of the Corps where they are looking at, with EPA, the responsible parties and looking at how the situation might be alleviated from the source. That's happening under another program.

Voice: You know another thing we didn't consider at Fort Peck is water (inaudible) entire Black Hills area. West to the east side of the Black Hills. You'll remind me?

Hargrave: Sure. Right. And I probably shouldn't have used it as an example.

Voice: We are not saying it's specifically tied to the home state; however, there's a list.

Hargrave: Right.

Sapa: There was a lot of mercury used in the types of mining we are talking about in the Black Hills. And the soils in western South Dakota also have naturally occurring mercury as well as arsenic. Fact is, I've review some literature where south of Fort Pierre, in the national grasslands there, that they had higher concentrations of some of the Bass in the flesh of the Bass. The higher concentrations of mercury;

higher than what we found in some fish in Oahe and the Cheyenne River arm.

Voice: That's something we are doing right now. We are building some background because there is a difference there in what's naturally occurring (multiple voices).

Sapa: I was involved in some of that natural resource damage assessment that they did on the Cheyenne River arm and the Whitewood Creek and for over 100 years the mining that was done and the mining tailings that were dumped in the Whitewood Creek—only 20% of them were captured in that Whitewood Creek Superfund sight; the other 80% are below and tied up in the Belle Fuch, the Cheyenne somewhere.

Voice: That's what we've been seeing all along the dam. The superfund sight.
(Inaudible) When they did their (inaudible) and superfund sight said okay here's the border of Cheyenne River Reservation and that's as far as the superfund sight went. We asked them how did you contain it in that one location?

Voice: There's sediment all up and down that.

McAllister: Right.

Voice: Either they did it partially for recreation area (inaudible).

Voice: Well, the Corps of Engineers does have a (inaudible) and the (inaudible) that's one thing (inaudible).

Borland: It is because of what the amount of fishermen that go back up that bay area. The channel is where the camel should be (inaudible). And it's moving out further and further. Like you said when they get this level (inaudible) the worst time is when we get it up to a certain level and we get a lot of ice on it and then when that spring thaw comes and the ice gets when you have three or four or five different chunks of ice ripping soil up and the water is pushing it come further out.

Sapa: I think there is a study or (inaudible) of 2000 to study that up for (inaudible) ambulant sediment area you are talking about.

Olson: There's been a lot of work done on it; I've got about two and a half boxes back of my desk on it. I am going to learn more about the dissolving of different metals into the water column so I asked for the information on that specific site. I've got boxes at my desk right now and when I find some time in the next two to three months, I'll get to those boxes and look at it. It's an area I have a lot of interest in personally. My Master's Degree is in environmental engineering and I've benchmarked all the areas; so I personally have a lot of interest. I'm going to be looking forward to it.

McAllister The lower basin said no, we want to leave the current pool where it's at. They like

the way the system operates today and we want to continue to operate that way. So there's some tensions. So it's our job to identify how you might change the operation of the system and then in turn, you do change it in one way, what are the impacts of changing it that way versus changing it another way and what are the impacts that way? So that we could then do some comparative analyses, in other words, did this one change things a lot or did it just change things a little bit? The second alternative changes things more or less than the first alternative changed. So eventually when I show information today, I'll be talking about percent changes and does this one have higher or lower percent changes than the other one? We are trying to understand the relative differences among the alternatives.

Early on in those studies we decided to write an Environmental Impact Statement (EIS). I was around in 1969 when the first Environmental Impact Statement was written by the State of Wisconsin. I worked for the State Ecology Department of Wisconsin at that time. And people were trying to figure out how do you present impacts in an EIS. I said well, gee, if an impact is good, then let's put a plus; if it's bad let's put a minus. If it's really, really good let's put a plus plus; if it's really, really bad let's put a minus minus. What does that mean? Doesn't mean a lot to a lot of people; it may have meant a lot to what the writer who wrote that document but there's no way to express what the plus means; is that really bad or good or just a little bit good or what? So as time has gone on the public is trying to better understand what these people are saying in their Environmental Impact Statements would ask that we quantify things; they would put numbers in there

and help us better understand what that change means.

So when we got involved in writing this Impact Statement (EIS) we wanted to put as many numbers in there to quantify things as much as we could and that required that we develop models and because of the massiveness of the system...

Voice: Why are we pushing on this one before you (inaudible)?

McAllister: Just to the point of reference; this year, for example, where are we going to be at the end of the winter? It says here, I'm just looking at your charts about 52 ½. Look at the February 28 number. Do they have a graphic in there? That gives you a better feel for where we are.

Voice: Just to compare it to the draw of the late 1980s.

McAllister: My guess is I haven't looked at the numbers; I've been so busy writing the impact statement that I don't go to the briefings on AOP, haven't looked at the AOP sheet in a week and so forth. I'm guessing up around 54 or 55 million acre-feet of storage. Nope, we had to be about 52...

Voice: That's where we are at now and looks like we'll go down to about 49.3.

Voice: What tribe is he with?

McAllister: Looking at the AOP presentation that's in there and what the front cover look like?
What's on front; what's it say on the front?

Voice: (Inaudible) cooperative. It's a blue outline of the U.S.

Voice: We have that but what page?

Voice: There is no page number on it. The top if it say Missouri Runoff above Fort Peck and then the bottom of it is a graph just like that one. And it looks like January 1 or September 13, 2001 it is projected to be at 52.5.

Voice: And it will drop on down to about 49 million acre-feet.

Voice: I think that should be January 1, 2002. 49 million.

McAllister: And so you see we are well above the 40.9 million-acre feet. So apparently, even though we are near the end the second year of the drought, at this point in time, we have not drafted near as much storage as we drafted... Remember this drought started in the middle of '87 but the years really good part is 1988 and by the end of the second full year of the drought. Oh, this is December so then the third full year of the drought we were down to 41 million acre-feet of storage. So we are about 8 million acre-feet less than we will be this winter. Depends on the period

of the droughts and what the downstream needs are and so forth.

But this is determined to unacceptable; the 41 was determined to be unacceptable by some of the upper basin states. Lot of the marinas were having problems for those of you from reservations that are on the Lake Sakakawea and Lake Oahe, things are a lot different around the shoreline of the reservation boundary adjacent to the or the shoreline adjacent to the lakes on your reservations. I understand the potatoes were the Standing Rock Tribe was growing potatoes down in the bed of the lake. Lot different situation then than what's there today and you took advantage of the soils that were there and I can remember when we were just across in the other building over here; we had a workshop here in 1998, had a gentleman talk to me about the fact that Standing Rock took advantage of the lake being down.

Sometime you can take advantage of the lake being down but generally the economic impacts are pretty negative. For example, in about the 1990 timeframe, (inaudible). Things out of the water (inaudible, noise) so again we have to be able to capture what that impact is in terms of dollars.

The kinds of economic uses that we look at are flood control; I tend to lump irrigation with water supply and we lumped water quality in the water supply and I'll talk about that a little bit later. Why we did that. Then there's navigation on Lower River, recreation, hydropower and flood control. The type of economic

benefits we looked at and we tend to characterize those in terms of million dollars a year of benefits.

However, there are also these environmental resource categories that we have to consider as we move ahead. By the way, we don't have these slides made up, we are going to try to get copies to you. Rick is over there right now, Rick Moore.

Moore: I'm right here.

McAllister: Did you take the disk over?

Moore: Yeah, I took the disk over.

McAllister: We'll probably get the copies back to you some time this morning or at least over the noon hour; so you have copies of these slides.

So we look at rivering fish, reservoir fish, terns and plovers. I didn't like that; I don't have that on slides; thought that this morning when I got up. Wetland habitat, riparian habitat and again historic properties. As we identify these impacts and look at what those impacts are, our jobs as Federal stewards of the lake system and basically some of the resources and uses that rely on the system trying to find a balance among these economic uses and among these environmental resources between, frankly, among (inaudible) between the economic uses and the

environmental resources.

So we've developed models to address those different economic uses of the environmental resources. So when I'm talking about uses I'm thought it could be about economic uses; when I talk about resources, I talk about the environmental resources from those two lists. Sometimes I get to the point where I talk about this so much and I've lived it for the last eleven or twelve years now so I tend to forget people don't understand what I mean by use or resource some of the basic stuff.

So again, if I lose you stop me like Mike did and I'll try to clarify.

Yesterday there were some questions about the graphic that was put in the Summary on page 11. I'll try to explain what this hydrograph, if you want to turn to page 11 of the Summary and look at that, if you want to put some notes on it or something.

As we operate the system today under the Current Water Control Plan (CWCP) we follow this red line across starting here and you see both the Current Water Control Plan (CWCP) and I picked one of the Gavins Point options from the Chapter 7 and from the Summary to show the difference between. So the Current Water Control Plan (CWCP) typically will release somewhere around 20-kcfs from Gavins Point Dam thru the winter and starting in late March we will increase the releases to a point that we need to in order to meet navigation targets on the Lower River at Sioux City, Nebraska City and Kansas City. In the spring typically

we are on the Sioux City targets and the Sioux City target normally is 31-kcfs; that requires that we release somewhere up around 30-kcfs in the springtime.

Sometimes it's down around 28-29 but somewhere around 30-kcfs is what we'll be releasing in the springtime under the Current Water Control Plan (CWCP) and you'll see that under most alternatives we'll release that in the springtime.

Somewhere around May 10-May 15 birds, the terns and plovers, that have been flying around on the various river reaches finally decide it is time that we need to start our nesting and so they'll start scratching nests in the sandbars, the clear sandbars and island areas along the reach of the river that they are going to inhabit for the summer. And so historically before we operated specifically for those birds in the... starting around early May, flows generally used to increase across the summer and the reason why the releases from dams have increased across the summer was that tributaries would tend to dry up. Just around here the stream is going to have water in it, it's probably going to have more water running in it in the spring when the snow pack is coming off and the spring rains occur than it's going to have in August when you haven't had a rain for two weeks. In the case of Omaha this summer, we didn't have rain the whole month of August in Omaha. That means that there's not a whole lot of water flowing into the streams and in turn the streams aren't putting a lot of water into the Missouri River. So those dousing tributaries dry up we have to increase the releases from Gavins Point Dam gradually to meet maybe a target at Kansas City in late July or early August.

So typically if we go back to look at the historical records we always had to increase releases across the summer. Well if you are a bird and nest on one of these islands or sandbars the flows keep coming up eventually that nest may be inundated thus the eggs would not...the small birds wouldn't hatch in the eggs or if they were small enough and couldn't move around on the island, the small birds would be killed. So starting in 1988-89 timeframe we started going up in releases as soon as birds started getting on the islands and in 1995 we started running a flat release out of Gavins and we determined what this release was based on what we felt the lower basin conditions were. If we had a wet lower basin, we would not release as much extra water in May knowing that we would not need as much water from the system out here. In a dry year in lower basin we might release a little bit more. When we modeled 34, 500 flat release for this study; so when the birds started showing up we picked what release we were going to make for the summer and we try to hold that all summer long. In this case 34,500 until the birds fledge, they fly away and there's no need to operate for them any longer and we drop back down to whatever the NAV release is. Sometimes we might even go up because the tributaries are really dry and we have to have extra water. But I think as I say here an idealized Gavins Point release in a normal situation assuming that somewhere around the end of August the tributaries start putting plenty of water out and we would then reduce our releases for the rest of the year. This could, like I say, just as easily have continued on straight out or gradually increased or gone out and decreased. It's whatever is needed to be the NAV target after that in the August timeframe.

And then around November, depending on how much water we have to get rid of, we may extend the navigation season ten days into December, which means that we would cut releases about the first of December. If we don't extend the navigation season because there's not enough water to extend the season then late November we'll cut the releases and we'll go back down to that 20-kcfs we started the year out with.

When the Fish and Wildlife Service put out their biological opinion and part of their regional and prudent alternatives included in that biological opinion they identified how they would like to change this hydrograph of Gavins Point Dam. What they said is we'd like to have a spring rise (higher springtime flows) followed by lower summer flows. So I'm going to show you what the flows would look like if we were operating under the GP2021 alternative. This is Gavins Point 20 means a 20-kcfs spring rise; 21 means we best get down to 21-kcfs so you see we are running 21-kcfs in this picture here. So the numbers in the GP options, in the Summary, means something. The first two digits identify what the spring rise is going to be; the last two digits identify what the summer low flow is going to be to the nearest thousand cubic feet per second (kcfs). For example, GP2028 would mean there would be a release of 28.5-kcfs (we just round it off to 28-kcfs); we can only have six characters maximum in our names for the models that I'll be showing here. So GP28 would mean we run 28-kcfs or we run across here, which is the white line; look at your graph the white line; the

white line runs across here for GP2028, 28-kcfs. Again, I'm showing the 20-21-kcfs options. So what happens somewhere around the middle of May, between the first of May and the middle of May the Service said let's go up with a spring rise of +20. So here's 30 + 20 takes you up to +50. Hold that for two weeks at the top and then come down for another week and continue on down (inaudible) by about the 21st or 22nd of June you are running 25-kcfs out of Gavins Point Dam. On July 15, drop that release to 21-kcfs and hold that for 30 days and on August 15 take that release back up 25-kcfs until September 1 and then you can do whatever you need to do to meet navigation service, evacuate water from the system, whatever the requirements are at that point in time in terms of what the Master Manual calls for operations of the system.

So it was to revise the operations in this timeframe, have a spring rise followed by lower summer flows and the reason for that is, as Rose talked about yesterday, was to go back and she shows here the spring rise that happened historically; to mimic the spring rise followed by lower summer flows then are current operation of the system.

Does anybody have any questions about what that figure shows? We show two alternatives in there and we show a lot of patterns—28-kcfs summer flow with a 15-kcfs spring rise so the white line from that graphic in the Summary sits about here and sits right across here. And then the lower darker line there, and I'm not able to tell especially from this distance, is this line here on up to higher release

and down on to the lower flow. That's the range of flows we are looking at. The Service just to let you know what the reasonable, prudent alternative had, they said the spring rise should be in the range of 15-20-kcfs; we'd like to have you start 17.5-kcfs. In other words, start in the middle of that range between the white line on the graphic and the top of the plot on the graphic in your book. They said we want you to follow this pattern in the summer. And the Corps is saying maybe we shouldn't go lower than 28.5-kcfs for the summer for the release in Gavins.

So we are covering in the Environmental Impact Statement (EIS), in the Summary, operations that follow this pattern through the year and that's the Current Water Control Plan (CWCP) and the Modified Conversation Plan (MCP). They follow this pattern through the year and then there are the four GP options that have different options for the spring rise combined with different options for the summer low flow included in that.

We have one that has 15-kcfs combined with this low summer flow; we have another one 15-kcfs combined with a 28.5-kcfs which is the white line that's on that plot. We have one that has the spring rise of 20-kcfs combined with this low flow pattern; we also have another alternative to have the 20-kcfs combined with the 28.5-kcfs. We have four options. The reason why we did four was we covered the range and made sure we covered the range here and the range here but if we started out with, let's say, the 15-kcfs and 28.5-kcfs your next choice under adaptive management could be to increase the spring rise only. So then you'd

have the spring rise of 20-kcfs and the 28.5-kcfs or you may change only the summer low flow. Well, you've already got; you might change this summer low flow so you might be in the 15-kcfs in the spring but have a 25-21-kcfs split in the summer.

So we wanted to make sure that we covered in the EIS and try to describe to the public...

(End of Tape #3).

Tape # 4

September 13, 2001 P.M., Roy McAllister – Corps of Engineers

McAllister: First of all what is the impact that Current Water Control Plan (CWCP)? Then if we change the Modified Conservation Plan (MCP) and I'll talk a little bit more about Modified Conversation Plan in a second but all that did was change how we operate in droughts. It left more water in the lakes; it left less water loose from the system in the summer because we didn't draw those lakes down as low in the drought periods. And so it still has the same pattern from Gavins Point Dam and so then we identify what would happen if we just changed those drought conservation measures. Change what happened during the '30s drought. Change what happened during the '50s and early '60s drought. Change what happened

with the (inaudible) in the late '80s and early '90s. And that does have an impact overall in terms of how wetlands are affected, how tern and plover habitat are affected; how historic properties are affected. Because the lake levels would stay higher during those droughts and the river flow would be less than they would be under the Current Water Control Plan in those droughts.

So we identify the change from Current Water Control Plan to the MCP— Modified Conservation Plan and then we would next go to the smallest change for the MPD, which is the GP1528. So if you would stop and think what the smallest change from the Current Water Control Plan at Gavins, we have this option and this option. The smallest changes go to the 15 and in the summer you have a choice of going to 28 or this option, smallest changes for the Current Water Control Plan would go to 28. So we said let's see what happens if we can make the smallest change of those four options at Gavins Point. Then we identify what that change means. Let's say if we went with that plan first, now you know what change would occur from the Conservation Plan to that first Gavins Point option plan. Then next we said well, under the adaptive management you may change to one of the other three options in the future. So then we talked about what would happen if you increase the spring rise? What would be that impact? What would happen if you would be decrease the summer low flow? What would be that impact? What would happen if you changed both of them at the same time? What is that impact? Compared to what had been from where you started in that point in time. So if you changed this and went down to here, what is that going to mean in

terms of impact? To various uses of resources.

Does anybody have any questions about the six plans that we have? We can show a slide that depicts that; there's not... the only description in... that's a real quick description. Maybe we can turn to that page and read through it right quick.

There's an introduction page. Go to the introduction page which is page 3 of the Summary and that second paragraph says, "The primary purpose of the RDEIS is to analyze the environmental effects of a set of six alternative operating plans for the Missouri River Master Water Control Manual – the Current Water Control Plan (CWCP), a Modified Conservation Plan (MCP), and four alternatives that add various Gavins Point Dam release changes to the MCP. These latter four alternatives, referred to as the Gavins Point (GP) options..." That's not the paragraph I wanted. That lists the six plans and turn back to page 11 and look at Gavins Point changes. So if you turn to page 11 that page we were on that third paragraph. "Summer flows... I don't think it's in here.

Voice: Do you have a copy of the press release that went out because it was very clear on the six alternatives and it explained each of those alternatives? Maybe we could make copies of that.

Hargrave: I think I probably do have.

McAllister: But anyway the... I kind of describe what you need to know. The four GP options

are GP1528; so 15 is 15-kcfs spring rise with a 28.5-kcfs or minimum service navigation release for the summer. Next was the GP2021 that represents the opposite end of the range. We'll drop that to 20-kcfs spring rise with a 21-25 split in the navigation season and then we have the GP1528 which is 15-kcfs with a 28-kcfs here and then the GP2028 which is 20 here and 28 here.

Voice: We have a question back here.

Voice: You may have already answered this; it's a real quick question. If the idealized Gavins Point release is the green line is what the U.S. Fish and Wildlife Service uses for their alternatives. Does that allow for the full navigation system? Just wanted to know...

McAllister: Yeah. Navigation would have to be off the river about this point in time here.

Voice: So it would be a split season that was discussed. Especially the last couple of years.

McAllister: Right.

Voice: (Inaudible) process.

McAllister: Navigation would be off. Some people felt it was off for 30 days but no it would

be off from sometime in mid-June until sometime in early August when the releases would be such they'd to go down the mouth. You've got to remember it takes eleven days for water to travel from Gavins Point Dam to the mouth. So flows are low enough in the river they may not be able to start navigating on the river until sometime in September.

Voice: I realize this isn't necessarily the place to discuss politics of it. I don't think that's particularly realistic. (Inaudible).

McAllister: And that's why in the Environmental Impact Statement (EIS) we included a range of navigation impacts. We said that navigation under this type of flow option or release option from Gavins, the navigation benefits could range from about \$5-\$5.5 million, which represents navigation coming in and taking advantage of the water release in this timeframe and this timeframe every year and then there are also some years when the pattern there's extra water all year long because there's so much water to get rid to like 1997. So they would come and take advantage of those years and on the other end of the option the navigation just can't make a profit on the river and they just leave the river and all that's left on the river or using the river are the sand and gravel operations and then the Corps would continue to maintain structures out there because that is a bank stabilization project. So even if you're not navigating on the river you still have to maintain those structures until you have to move what we call the waterway materials to ensure that those structures continue to be maintained properly.

So that comes out to be about a million dollars a year.

Hargrave: So in the Army EIS we are looking at like the best possible outcome and the worst possible outcome for navigation. The other thing we are doing is so we capture the full range. But the other thing we are doing is between the draft EIS and the final EIS we're contracting with Tennessee Valley Authority to look at the issue harder to see if in fact that would be the end of the Missouri River navigation. If we went down say to the 21 so that rather than just relying on what the industry tells us that we actually have a better economic analysis of whether that would actually end the Missouri River navigation.

McAllister: If you look on page 16 of the Summary, we're going to jump around here a little bit but that's fine. On page 16 of the Summary it has a bar graph at the top that shows the navigation benefits. You'll see that there are two—there's a high and a low option for the GP1521 and GP2021 alternatives. So those are the two alternatives that have the summer pattern on it. As shown here on the screen and we show the benefits range from about one million dollars a year up to about \$4.8 million a year. So what we are saying right now that we are not 100% sure that navigation will leave the river; if it does stay on the river and fully use these periods plus those years where it fills in the whole year because we've got so much water to get rid of that they'll get about \$4.8 million worth of benefit. The real number may be in between. In other words, what we feel and there are others

out there that feel if there's business on the river and you've got these high-flow years, you've got the wet springs and they come up to Kansas City but there's not enough water to get on up to Sioux City, they'll take advantage of getting up at least to Kansas City and move some commodities and so the real number may be somewhere in between these two sets of numbers. And that's what we are going to try to get a better handle on. If indeed they would come in and navigate the river where would they be in that range of benefits?

Voice: Roy, could you (inaudible) make up analysis... impact current system that we have for water (inaudible) EIS?

McAllister: Like what was happening in real life today versus... The Current Water Control Plan comes as close to that as we can do. The reason why I say as close as we can come to it—there are a lot of decisions made on a day-by-day basis that don't follow the exact criteria in the Master Manual. Not because (inaudible) what is called discretionary authority that allows them to go outside the actual numbers and I guess it's important to talk about that right now because...

Voice: We're trying to figure out where (inaudible) dam generate.

McAllister: In terms of dollars, yeah. We have Current Water Control Plan is as close as you'll come to that number. And it's somewhere around \$700...

Voice: Overall benefits?

McAllister: Overall benefits?

Voice: \$241 million.

McAllister: \$241 million.

Voice: For all of them?

McAllister: Yeah, for all of them.

Voice: Annually?

McAllister: Yeah, that's the average annual.

Voice: How does that...do you have a rate on that? Like on terms of the...is that hydroelectric?

McAllister: That's all hydroelectric.

Voice: Is that navigation; is it (inaudible)?

McAllister: That's all hydroelectric. Summer (inaudible). One million dollars.

Voice: Are you generate (inaudible) navigation (inaudible)?

McAllister: Yeah, that's the next part of the presentation.

Voice: Oh.

Voice: Good lead-in! Excellent question.

Voice: Under Gavins Point release in order to fluctuate this is where we're going to be (inaudible) unbalancing the reservoirs (inaudible).

McAllister: Right.

Voice: So at some point say Fort Peck (inaudible) buildup (inaudible) additional releases at Gavins. How is that going to work (inaudible)?

McAllister: The way that it will work, there's one criteria that's included in all the alternatives of the model except for the Current Water Control Plan and that is called balancing the system. What we do unbalance is the upper three lakes only: Fort Peck, Lake Sakakawea and Lake Oahe. Again the easiest way to discuss that is to turn to page 12. Look at that graphic. Let's say that this is the year of the Fort Peck Lake is to

be drawn down. What we would do is we would allow Fort Peck Lake to what we call... first year, second year... okay, first year you draw down about three feet and you hold it down at that level for the second year unless you have high in-flows and then it would sit there and kind of fluctuate, but it sits there does what we call flow, now down about three feet. That will allow vegetation to grow around the rim of the lake and the third year you fill that lake back up to its normal level and so you inundate that vegetation which is beneficial to the...

Yellow We can't hear back here; we're having a conversation off the left and it's difficult

Bird: for us to hear. Excuse me; if you guys want to have a conversation do it out in the hall please.

McAllister: Any sidebars out in the hall, okay.

Yellow Really distracting and we can't hear. Thank you.

Bird:

McAllister: So the reason for that initially the reason that that type of alternative or operation purpose was that the history resource managers of the three states of Montana, North Dakota and South Dakota said that we need to do all that we can to enhance our fisheries and we'd like to have you help us by creating this vegetation around the rim of the lake and inundating it so that the reason for inundating that vegetation is that vegetation serves as a fine (inaudible) for spawning period for certain fish species and then after the fish hatch and are in a very vulnerable state,

of course, develop cannibalistic and so the young fish need that vegetation to hide in until they are big enough to get out and move around and get away from them.

Voice: One more question. When you release from Gavins Point, say Fort Peck reservoir the tanks that sit in water, then all of the other reservoirs certainly have to. They'll be maintained (inaudible) to that.

McAllister: You have to remember there's water coming into the system during that time.

Voice: As you go, right.

Olson: On thing that we were talking the other day about Fort Peck, when do you start that release; what triggers that specific date; we want to have the flow at Landusky, Montana or is it so many days after the water first starts coming into the upper end of the lake high-flow? Steps up the lake level come crashing down; there are a lot of factors that go into that. And the lake will not necessarily drop three feet during the spring rise period out of Fort Peck. I used another term—spring rise. All the alternatives except for the Current Water Control Plan also have a spring rise out of Fort Peck, which is important to (inaudible).

So the lake doesn't drop three feet just during that one little period.

Voice: What is the elevated level of river going (inaudible)?

Olson: The flows that occur out of Fort Peck during the spring rise period in Fort Peck are about 23-kcfs of the model. The Service doesn't (inaudible) of 20-25 in the springtime, model 23. Out of Garrison there would be higher releases to in the year it was drawn down and you are trying to move water through the system as well as to raise Lake Oahe. So that's one of the things we address in the EIS. If somebody doesn't get into these details and if you want to hear these details you need get the EIS.

Voice: (Inaudible) navigation and with all the water Gavins Point (inaudible) and all that rain coming (inaudible).

Voice: Comes from all of them.

Voice: So they're all to release (inaudible) rainfall to raise that water level up (inaudible).

Voice: Somehow or another they will. Some are nearing... there's some interest in the operation that was done there adjustments made in various lakes that are hard to explain because they are set up to meet the hydropower needs; so there's not exactly the same amount of water and storage even today in the Current Control Plan; there is variability through the years. Like to have Lakes Fort Peck and Garrison set up a little bit high in the fall so that you can have your winter hydropower production out of those. Fort Randall Dam or Lake (inaudible) is

drawn down in the fall so it has space for Lake Oahe releases to go through Lake Sharpe and on into the powerhouse at Big Bend Dam and on into then Lake Francis Case. So there are a lot of adjustments that are made there.

Voice: And in your Summary one more question and I'll let you go. In your Summary, do you have low comparisons of this for places like (inaudible) Point or Culverson? So we would know if there's a difference now between the current water control and what is going to happen when this is (inaudible) unbalancing?

McAllister: The EIS doesn't go into that type of detail. That's really getting down into...that's why we are going to be having workshops. We'd like to have you come to workshop; I could sit down at the computer and show you what it would be from year-to-year. We can show you average annual or annual values...I'm trying to think. EIS...we didn't show information at (inaudible) Point; we showed how things might change at Bismarck. Because we have an urban area; we noticed that there was slight increase in flood damages in that reach; so the flows support that bottom line, but yeah, there are some higher flows. And again, some response to getting the water downstream for this. Down in springtime for the spring rise.

The system is operated as a system, so consequently change...what comes out of Gavin can change all the way up through the system. That's again why we develop these models I'm going to describe in a little bit to show what the changes would be to the different resources and uses. (Multiple voices.) (Inaudible.)

Yeah, the slide show it with that and it's within the Tribal Appendix that's included in the handouts for this meeting.

Voice: (Multiple voices.) (Inaudible.)

McAllister: One table for each tribe.

Yellow This is not accurate.

Bird:

McAllister: Well, we'll get into that (inaudible).

Voice: (Inaudible).

McAllister: Yeah, we talked about that yesterday. I'll get to that. I changed two of the slides already; I didn't have the data with me to change the other three, but they'll all be changed in the EIS when it comes out. We appreciate your comment because we didn't know how to approach that and you gave us a good option to follow.

Voice: (Inaudible).

McAllister: I'll tell you what my personal feelings are on historic property numbers because we've been told off and on throughout the whole study about the weaknesses of

the various models and historic properties model has weaknesses just like each one of the models has. For example, navigation we have already talked about how we can't capture those benefits of our current model; we are going to go out and do some special studies to try to understand that. So we've done special studies in hydropower; we did a lot of different studies as people have identified issues, we've gone in and tried to find ways to get those answers for him.

Voice: We'll talk about the historic properties in a little bit when we get to that.

Voice: Actually the alternatives are on page A-6 of the Tribal Appendix. Just a short (inaudible) description of it.

McAllister: I personally have not seen that Appendix. Rose is the one that worked on that and I was surprised in fact when I saw it had the impact tables in it so. That's the first I knew of it when I saw that. I thought of the Appendix what about Monday?

Hargrave: Right.

McAllister: First I even knew the tables were in there.

Voice: Then each of the charts then have the alternative; is that how it works?

McAllister: Yeah, the alternatives are on the top...

Hargrave: The alternatives are across the top.

Voice: They are going to pass those down according to the topic.

McAllister: Yeah, some of these you won't have a lot of interest in; I'll just run through them and if there is one you want to stop and talk about in a little more detail, stop me and I'll go into it.

Under flood control analysis we looked at what would happen in terms of flood damages should we not operate the system. We just let the water come in, run on down the river and we have... the flood of '52 would have been the flood of '52 in Lower River. That was the flood of record that Lower Basin; people on Lower River remember because that was the last big flood on the Lower River across the entire reach. So one, this alternative has no dams in it or assume the dams are not operating in it and that gives us damages. Then we go through and we run the model to determine what the damages are under each alternative. And the differences between those are the flood control benefits. So flood control benefits are around \$400-410 million a year; the damages under the uncontrolled flows might be, let's say \$800 million a year; damages under the Current Water Control Plan (CWCP) are, let's say, \$400 million a year and so the net benefit—the difference between those two are \$400 million a year so that's how we arrive at that number. We have information on what levels do the flood occur in each

reach; what type of crops are growing in that reach; what type of buildings are in that reach; how many buildings are in that reach; what are their values and so we run them all under water; we identify how far up on these structures and what fields are under water and what would be the damages for the different alternatives. And we come up with flood control benefits that way.

That's the way we do flood control benefits even today. When there's a major flood on Lower River or there *was* a flood on Lower River because (inaudible) we go through and we compute what flood damages were prevented. So we have to go through and do the reverse process so we are dealing with the Master Manual. We know what floods occurred when the flows were controlled but what would have happened had the flows not been controlled. So we make estimates of what the uncontrolled flows would have been and what those damages would have been and we take the difference and that's the benefits the system provided. The same type of analysis whether you are looking at what would happen if you change plans in the future and what happened last year; what floods did we prevent and what were the damages we prevented last year.

Navigation benefits are determined... I'll just give you an example, let's say you are going to take a barge load of grain to New Orleans to be put on a ship to be shipped to China. We look at how it costs to run it by barge all the way to Sioux City, let's say it's going from Sioux City to New Orleans. We know what the cost is to ship it into New Orleans by barge; then we go through and look at what other

way would you move that grain if you didn't have barges. We could put it on a (inaudible) train and run it down to if it's going to China we'd run it down by (inaudible) train to Houston, Texas or you might put it on trucks and run it over to the Mississippi River and put it on a barge on the Mississippi River and run it down river. We look at different ways you can move that same barge load of grain and determine which of one of those other ways is the least costly way of moving that other than by barge. Then as we find out what that cost is, we find out what our cost is to move by barge and take the difference and that's the benefits that that barge provided. So we look at the differences between with and without barges on the river and we come up with the least costly alternative and compute the benefits off of that. So we have the value per ton to move corn at a value per ton saved; when we move asphalt, when we cement; when we move waterway materials; when we move whatever commodities we move on the river we know how much money is saved by running it by barge versus by running it by some other method.

Voice: What is the some of the other criteria other than economic analysis including cultural, historic preservation?

McAllister: Yes.

Voice: Is all that factored into your alternatives? Economic impact.

McAllister: Not the economic impact. That's why when we put those tables we show

percentage of change. That's the thing that makes them all equal—it's about dollars. We do not have a dollar value for that but we could stop and say that you can come up with some sort of dollar value. In other words, if you are trying to operate for a specific resource and you develop a plan to operate for that resource; compute the economics for that plan operating for that resource and then do another plan that doesn't specifically operate for that resource; you take the difference and you find out the difference in benefits. That tells you what did it... what money was saved or what extra cost was incurred to operate for that resource. Then we do that for in a lot of ways of studies. In other words, when we operate for Fish and Wildlife Service (inaudible) to operate; how much of that cost is in terms of dollars; what does it cost in terms of hydropower dollars or did we gain hydropower dollars. So in a way you can get at it if you can identify an operating plan that meets that specific need.

Voice: So those factors are included?

McAllister: Hydropower—we look at if you don't get power from the Mainstem Reservoir System chances are you draw it from a new power plant that had to be built to meet that type of load. If you have a facility that's had a lot of peaking capability in it, there'd have to be some sort of peaking plant built somewhere else out there to provide that energy that the Mainstem System didn't have. The reason why we say it has to be built is that basically there's not a lot of excess capacity in the system out there and so we make the assumption that if you are going meet this

need you have to build something and we know what it costs to build that type of facility is. In fact, it's a mixed facility.

(End of Side 1, Tape 4)

McAllister: (Inaudible) megawatts. If we move the megawatt capacity from the system we know that it's going to cost X number of dollars to replace that megawatt capacity. If we lose the megawatt hours (MWh) of energy from the system, we know how much it would cost to buy that from another facility that would have to be built up there.

Voice: Roy, could we have a brief (inaudible)? (Inaudible). Talking about reservoir and the megawatts.

McAllister: There's been (inaudible).

Voice: (Inaudible).

McAllister: It's not in the Summary; it's...

Voice: Where would we look at that?

McAllister: We have... it's not in any of this material. You have just the EIS. The EIS, just to

give you an idea, the EIS is...

Voice: (Inaudible.) It's hard to make out... you know.

McAllister: Well, that's why we are doing the workshop

Voices: (Inaudible.) ...give us some idea as to what you generate (inaudible).

McAllister: We are going to have a workshops and we'll be able to sit down with you and go through and identify, answer your specific needs based on the information within the EIS itself and sometimes the answer is not in the EIS but we can try to get you the answer by looking at data that we have stored in our computers. You stop and think as all these resource models—most of them are multi-time step models, meaning that they generate yea number per each month. So if you were to look at the 13 resources in 100 years you've got a tremendous amount of data; you can't go through and identify every little thing. But if you have specific information need we can sit down and try to give that and answer that question right away. The EIS may have an answer in it; if it doesn't have the answer in it we will try and get you an answer by looking at the data that's in our computer.

Voice: Are you talking about (inaudible.)

McAllister: Talking about (Inaudible) will come the end of this month. That will accompany

this.

Voices: (Multiple voices-inaudible.)

McAllister: That's why we have a six-month comment period.

Voice: (Inaudible) six months (inaudible).

McAllister: I understand.

Voice: Very appropriate to have these...

McAllister: Six months doesn't buy a lot of rope the EIS, you wouldn't want to...

Voice: (Inaudible.)

McAllister: I understand exactly.

Voice: And so how are we going to get (inaudible) something is forthcoming?

McAllister: The EIS will come out the end of this month.

Voice: But you said (inaudible).

McAllister: Then I don't know what your question is, that's why...

Voice: I'll rephrase my question. Each of the dams how much revenue (inaudible) exiting right now with the proposed EIS (inaudible) change (inaudible).

McAllister: We can tell you the full levity generated; we don't have it by dam, by dam, by dam. It's not but we *can* get that; let me stretch it, I can get to that number.

Voice: And each of us have a specific region, it's very appropriate.

McAllister: But it's all lumped into a total... what's generated at Fort Peck may end up in Minnesota somewhere or may end up over the Divide.

Voice: I understand that.

McAllister: So we don't track the electrons individually; we just look at as the total system basis.

Voice: (Inaudible.)

McAllister: We can, we can do it that way but the problem is being our methodology is that what step in the process in computing firm power and Western when they market

they don't have a firm power commitment from Fort Peck; they don't have a firm power commitment from Gavins; they have a total power commitment from the whole system. So the hard step in the process is how do you break that firm power commitment down in the system into what may be allocated to each one of the dams.

Voice: But when controls change at each of the dams (inaudible) as an impact; (inaudible) these are moved by each dam (inaudible); do you have that information?

McAllister: And you will not get that is what I'm saying. You will get a total system hydropower impact. Because the hydropower is marketed as a system's power. They don't market Fort Peck Power one part of the country; market Gavins Point Power to another part of the country and so forth.

Yellow Well, then if you have at least one tribal nation here requesting information so that

Bird: we can deal with an issue that's critically important to us as a sovereign nation and, Rose, I'm going to ask that we get that breakdown. It can be done.

Voice: Oahe could do it. Oahe could.

Yellow Anybody can do it. You've got to get that information and then I just need to

Bird: make a point here that a sovereign nation is asking for information and we are being told we can't get it. That's not true; we can get it. Okay, we need that

information.

McAllister: Let me ask.

Yellow Let me finish. We need that information in order to initiate official consultation

Bird: with the U.S. Army Corps of Engineers. Okay, Rose? Thank you.

McAllister: Next then you are telling me what the per power commitment is about—Fort Peck Dam.

Voice: At Fort Peck Dam, we can tell you what's been generated.

McAllister: I need firm power commitment.

Stas: Well, when the contracts are marketed, as you know, on the (inaudible) normal years on the system and there's power that gets moved depending on if you are unbalancing reservoirs or there is a flood going on; we buy surges of power. We market our 20-year contract and our allocation to the tribes as well. (Inaudible) megawatts based on a normal water year. So that's on a given year, we can tell you after the year is over how much was generated from each dam and how much was sold. But it is not marketed as dam-by-dam. It is not marketed that way.

Voice: Just, if you look at even Cooley Dam out there (inaudible, noise). I think we've

got a historical record of how... (Multiple voices) They have a really good analysis.

Voice: How has it been marketed and generated over time and each year. I think the Corps has had it on record as far as trying to project; it's based on what the system, not only the Corps dams, but also (inaudible) Dam and Canyon Ferry and (inaudible) Dam and Yellowstone Dam is all Pick-Sloan. This part of the system is the Pick part but it's (inaudible) part of Sloane.

Voices: (Multiple voices.)

McAllister: I know how to get it from my end. I'll get it for you.

Voice: Should be a formula. It's all based on acre-feet of water, right? It should be formula based acre-feet of water.

McAllister: I know how to do it.

Voices: If Cooley Dam can do it why can't Garrison. (Multiple voices.)

McAllister: I'll get (inaudible).

Voices: (Multiple voices.)

Voice: We are talking about two different things here. You're talking about marketing; we're talking about the effect of a generation of dams just from each dam based on the water code and then you can give some idea of what the change (inaudible).

(Multiple voices.)

McAllister: I will come up with a number. Just so you know (inaudible), I will come up, we know what the total revenues are; what was that number and I know what the distribution of energy is from each dam so I'll just put the total revenues based on that proportion of energy generated at each dam.

Voice: I've got a summary in my vehicle of how much the total capacity is but not a breakdown annual how much is (inaudible).

Voice: We can come around. Make sure you write that down.

McAllister: Rose, we'll get an answer to that question.

Yellow We're going to get both, right? Both questions, so as we need to know what the

Bird: income for each dam is and also we should know what the impact (inaudible) for each dam is.

McAllister: Well you'll have the impact—that's automatic part of the EIS.

Yellow Okay, we want the incomes too, Roy

Bird:

McAllister: You are talking revenues and we'll come up with revenues.

Yellow Okay, good! The WAPA guy, he can come up with the income, right?

Bird:

McAllister: They gave this (inaudible) to Williams.

Yellow Great.

Bird:

Voices: (Multiple voices.)

McAllister: That's what Nick's saying is he knows how much revenue is generated based on energy produced; I'll use that number. That's how I'll get it.

Yellow We have a question over here.

Bird:

McAllister: I'll put the total buy; how much is the average annual generated by each dam. So 50% comes out (inaudible); 20% comes out of Garrison; 20% of revenue Garrison.

Voice: Average of those?

McAllister: Average!

Voice: I have a question about the workshops. Is that the only time that you will ask these individual questions and get individual answers for it? Will there be like a (inaudible) thing get to the Omaha office or somewhere to (inaudible) questions?

Hargrave: However you want us to do it for you. I mean that's what I guess I'm saying. We're open to it. We can either have like the times of the workshops; we can have side meeting or we could send folks out to talk to you at a separate meeting or take time at the workshops. Any way that you feel is best for us to get that information from you.

Voice: Well, I guess one of the recommendations that I'd be making is that you visit with each individual tribe.

Hargrave: Right.

Voice: Not just having workshops set up and testimony taken.

McAllister: I think that offer has already been made. We sent out letters saying that we are willing to sit down and visit with each tribe on the Master Manual and that will continue as part consultation process. At least we will be trying to fulfill our responsibilities on that.

Voice: Is that (inaudible)? Are you going to be attending the consultation meeting or is this just (inaudible)?

McAllister: We can.

Voice: Okay.

McAllister: Yeah, this specific needs identify the (inaudible) we have wherever we need at those meetings.

We've got a plan of say ten people and (inaudible) ten people on there. Meet with you and talk with you about and try to answer your specific needs.

Yellow Bird: Yeah, I think we should be involved; we have these tribe meetings to give you a report and meet all together. Because there are lots of issues that affect us all. I think we should do both. And hopefully the Corps is budgeted for that.

McAllister: The EIS cannot sit down and go into that type of detail on nation-by-nation basis; that's why (inaudible) get face-to-face, talk about it and if there is some sort of (inaudible) things we can do to help you, we'll do that too. That's our responsibility. We'll fulfill our responsibility.

Sometimes it takes me, my brain doesn't always synapse perfectly. It takes me a while to figure out but frankly, I'll try to figure out a way to get an answer to *every question* I can. That's part of my responsibility as Technical Coordinator. I've worked on the site for twelve years; I know how the models work. My biggest problem is I lost my number one modeler; he retired on my birthday two weeks ago. Talk about impacts—ho,ho! But we'll figure out a way to get answers for you. In fact, I enjoy those challenges. So we'll get them.

Yellow So are we going to get to the tribes so that you can explain each one of those and
Bird: what the numbers mean so that the tribes can go home and read this document and
then have an opportunity to interact with the Corps when we have those meetings?

McAllister: That's the purpose of this presentation.

Yellow Okay.

Bird:

McAllister: How many really want to understand how each one of these resources is
generated? Let's just go through these... there's four slides here that talk about
how they generate and then we'll get right down to the numbers you'd like to look
at.

Water supply—we look at what the cost would be for example when the lakes are
drawn down and if you to do additional maintenance on your intake; if you have to

move your intake because it's not low enough for the reservoir. Those type of costs are thrown into the water supply model and somehow or another there's a way determining what the benefits are and I'm not sure what that basis is but again I can always find out the question, if you really want to know. Because we look at what the impacts are on a year-by-year basis and then we come up with an average annual value—the average annual values are what's shown on the bar graphs in the Summary. All these, everyone of these resources, when you want to know what the average impact is over 100 years that's what the number is in the Summary—the bar graphs.

Recreation—we look at the value of recreation visitation and there are a lot of different ways to compute what the value of a visitor day is or visitor hour is at various facilities. We use what's called a Travel Cost Methodology, which is how much does it really cost to go out and participate in that type recreation. It gets rather complex and again that's something that we would sit down and talk; we'd have economist to help us answer that question but basically look at, for example, the type of visitation that occurs on Lake Oahe. Let's just use that for an example. You may have—well, you do have fishing, picnicking, you have water skiing; you have boating; you have a wide array of recreation uses that go into that and people are willing to pay more for different types of recreation value to fish (so much fish per day). The value to picnic is so much a visitor day; it would be less to picnic than it would be to go fishing. To go boating would be higher yet and you take all these different values on a use-by-use basis and you come up with an average

value per visitor day for each lake. So each lake has its unique number for what a value visitor day is and then we look at how many visitor days or visitor hours or whatever occurred in 1990 and we then look at what happens as the lake levels go up and down. As you well know that when the lakes went down in the drought that went from 1987 to 1993 that fewer people went to the lakes potentially because they couldn't enjoy the type of recreation they wanted to enjoy. They used their well-earned dollars instead of going to Lake Sakakawea well then they went to Devils Lake or they may have decided to take an ocean cruise or may have decided to go skiing in Colorado. They used their recreation money in some other way.

So the value of recreation went down during the drought. We tried to capture how that recreation use would have changed the droughts and in turn we know what the unit value is of those visitor days and so we come up with a value for recreation visitation during every year of the period of record for each lake. We combine the values for the lakes; we know what type of recreation occurs on the river reaches; we combine that into the number and come up with total number and again average in the numbers within the Summary. When you look at the RDEIS itself that breakdown will be made among each one of the reservoirs. Each one of the river reaches and so you can go in and look at how your specific reach of the river will be impacted and that's frankly how we got numbers that on a tribe or reservation-by-reservation basis.

Environmental resources—and these do not come out in terms of dollars. These come out in terms of some unit that seems to apply or some unitless number that at least allows us to again, we are trying to understand relative differences—it's the difference in that resource value going to be *big* or is it going to be *small* as we go from one alternative to the next.

So young fish production, when that value was determined the methodology that was determined back in the early '70s we met with each one of the fisheries agencies and each one of the three states, actually four states, that affected, because Nebraska has fishery, (inaudible), and Gavins Point Dam on Lewis and Clark Lake. (Inaudible) they had data over the years of what type of, how many, Yellow Perch or how many of the young year there in their lake that first year. They go out and take samples so we have numbers. They knew how many Walleyes were in the lake, younger year Walleye. How many Smelt? Whatever the various fishes they do surveys on; they put fishnets out there and capture the fish and count them so they have numbers for different types of younger year fish in their lakes. So we looked at different hydrological factors like: how much does the lake level change between May and September; how many million acre-feet of water went through that lake during that period; what was the flow through the lake in May versus the flow through the lake in September? We looked at different hydrologic parameters like that; we put them into equations and let the computer come up regression equations through that data. In other words, they knew what the data was and the computer comes up with an equation; draws it

through that data set and its best fit on that data with those parameters in there comes up with the various co-efficients. And then these biologists would sit down and say look at that equation. Do I really believe that the lake level change between May and September is a factor? Okay, I believe that. Now do I believe in the *negative* factor; the equation said it's a negative; they said no it's a *positive* factor. That equation is thrown out and keep trying different equations until you come up with number one (inaudible) what you think are the primary factors that affect your fish in your lake but secondly, the plus or minus sign in front of the co-efficient for that parameter is going in the right direction. You don't want to have an equation that doesn't make sense.

Once you come up with these equations, that tells you how well you correlated with that data so you can say—good correlation so you say let's use that equation and you come up with what's called an index. When you go through the computation process and put that equation into a log function, I believe it is. I took a lot of math and I don't understand what the means but they put them in equations that end up coming up with a number for each one of the lakes and each year. The .4 or .5 or .3, but anyway it gives you a number for how well the young year fish production was in that lake. The higher the number the better the fish production in that lake that year. The lower the number the poorer the fish production. So then you sum up of the numbers for each of the six lakes in the system and you come up with a total index value and that total index value is going to be around 2.00. So again when you look at the Summary the number that

is presented in there ranges from 2.00 to 2.12, I believe. The range that covers in there. So the index is 2.12 it's going to be better than the one that was 2.00. Now how much better that is, that's for you to judge. You can go back and say well, my lake, I hope it went positive. (Noise) Wouldn't have the lake reach data. Lake shows that if you are on Lake Oahe and show you went from .55 to .52; well that was bad even though the total index went from .2 to 2.12 so. So EIS has more data than the average annual. The average annual is the total for all six lakes combined. The EIS breaks it down lake-by-lake.

So if we can answer questions about by Tex and Pemina have identified. How is my lake affected? That's how we get the tribal impacts for your reservation because we know what happens on Lake Sakakawea, for example, or what happens on Lake Oahe or what happens on Lake Sharpe.

Coldwater Reservoir Fish Habitat— we have models that identifies how much of the volume of water in that lake is colder than a certain temperature; how much water in that lake has dissolved oxygen content above a certain level; both of those are important factors for the coldwater fish that inhabit that lake—salmon, the lake trout's—they have to have certain requirements of that. So we can identify on a month-by-month basis how much of that coldwater habitat is available in each one of the lakes. Knowing what the lake level is; what the inflows of that lake was and what the out-flows of that lake was or were or however you want to say it. Consequently we can identify coldwater habitat on a year-by-year basis and it's in

terms of the volume or million acre-feet of water in that lake that meets the coldwater requirements for the fish.

Next we have Coldwater and Warmwater Fish Habitat models—they are both the same model; it's just that one looks at how miles of river downstream from, well, coldwater looks at downstream from Fort Peck Dam and downstream from Garrison Dam. Those are the two reaches that have coldwater habitat. How many miles of it meets a certain criteria in the spring through fall period and I believe it's the month of April through September and the other one is May through September or April through October. It's two different periods for the cold and warm water. The warmwater fish have to have a temperature to be *above* a certain level and coldwater fish have to have a temperature *below* a certain level and each one of those miles of river for coldwater habitat or miles of river for warmwater habitat.

So we compute those miles on a year-by-year basis; it's one number for the year and if you look at the minimum amount of habitat there was in that year. Take the minimum amount of habitat in that spring through fall period and that's the number that is reported for 1933. We do it again for 1934 and so forth. You add them all up and divide it by 100 and come up with number that's in the Summary in front of you.

River Fish Physical Habitat—that's where we look typically at the fish—they are

called native river fish—there were the species that was in the river before the dams were built and before people introduced other species that they wanted to fish for. And we knew that historically those fish had certain what they call niches—places they like to hangout in the river. They either like shallow water habitat, slow-moving summer; they like to feed; fast-running habitat in the spring. So we knew that somewhere in the river there were niches that they all liked historically. So then we said well, we know what the river was like in terms of the velocity of flow, depth of water that way we can look at what was the distribution of the velocity across the channel. What was the distribution of the depth across the channel? Knowing those two parameters historically we can then say let's take today's cross sections that are out there; so we went out and took the cross sections today and we ran hydraulic models to them; it told us that it was a discharge of 15-kcfs—here's what the depth distribution was across that channel and what the velocity distribution was across that channel at that point in time. So how well did today's velocity or depth distribution match up with what was there historically. We compare the two; if they match-up real well in every... in various months of the year then you get a high value. A high value—a perfect value is 1.0. The closer you are to 1, that's a high value. If it didn't match up very well, then you have a lower value or .2 or .4 or .1 it didn't correlate very well. So you went through and looked at each month for the period of record; how well did we match up with what was there historically in January; what was there historically in February. We make a minor changes of the model in that we said that in April, May and June because historically we have these high flows; historically these

high flows got out of the river bank and flooded land and that was good. It flushed the (inaudible) and organic material into the river and it made the river more active biologically; a lot more biota in river and the fish flourished at that point in time. Instead of following this criteria of comparing the depth and velocity distribution on a month-by-month basis in April, May and June because we actually have flood flows in April. We have to have flood flows in May; we have to have flood flows in June and how close do we come to those flood flows? Do we come real close to them, like .9 or were we a long ways from flood flows and like a .4?

What we did then next we went through and counted up all the .4s and .9s and .8s across the year and came up with a number for the year. You had a perfect match all year long and you get a 12.0. A value of 1 in each month times 12 months is 12.0. You have 4 match you may come up with a 6.0 or only half as good as a 4.0. Then we went through and we summed up all the values for all the years and took an average annual of value and that result was 4 and then we had nine reaches we did this on and so the net results looking in your Summary here but I think it was probably somewhere around an 8, 9 or 10 for physical habitat. No the numbers, there's 8, 9 or 10 when we had nine reaches and you multiple times... you add up all the reach and come up with a number around 83 and that's what is in there. A perfect number—there's nine reaches—the perfect 12 was in 180. You can see that if we were going on 83 we didn't come anywhere close to 180 perfect value. But then we ran what is called the run-of-river (ROR) (inaudible) river system flows, are they cold? They are not controlled by the dams—that's called run-of-

river (ROR) and whatever comes in runs down the river; no one is controlling that flow. You run a river through the day's cross sections which aren't the same as they were historically, you will find that you *don't* get a perfect match. There were not flood flows every April, May and June historically. It only happened every three years or two out of three or two out of five and so you didn't have flood flows every year.

The best value you can come up with when you add up all nine reaches for the average annual value for each reach was, I think, a 90.3. That's the ROR number on physical habitat – page 20. When we look at that values range from 81.5 up to 82.4 for various alternatives. So we can improve it from an 81.5 to 82.5. Run-of-river was 90.5; so you can still see we are a long ways from the 90.5 but at least you get a feel for how much did you move toward what... you completely un-control of the flows; how close did you come to controlling the flows and that gives an idea of how much you have to control on the system you have to take away to post 90.

These other three down...

(End of Tape 4)

Tape # 5

September 13, 2001 P.M., Roy McAllister – Corps of Engineers

McAllister: In May and June, how many acres did we flood for two days; how many acres did we flood for four days? And we identified how well we did then on the Lower River and we looked at low-lying land because basically we don't flood land today downstream from the system, by the operations of the system. So we looked at all these low-lying lands, the Old Oxwell Lakes and how many acres of those did we flood for 2, 4, 6, 8, 10 days. Each year we kept track of that (inaudible). The reason you do that is you want to know how long did you flush the (inaudible) from these over bank flows; how often do you flush the (inaudible) in the springtime to get into the river and get into the shallow water areas to provide the habitat for the biota.

Next we looked at what happens in the summer. Historically there were low summer flows, so how much shallow water habitat did we create? That was the habitat that was basically less than 5 feet deep and loss is less than 2.5 feet per second. We had taken these cross sections up here for this analysis so we had cross sections to look at for the months of June, July and August and so we looked at, for shallow water habitat, the numbers that were presented in the Summary are those that occurred at the mid-July to mid-August. Remember that graph we showed where the summer flows drop down to the lowest value in mid-July and stayed there until mid-August then went back up in that little Gavins Point diagram we looked at? So we looked at that middle of July to middle of August

timeframe. We see how much shallow water habitat is there.

We also looked at what type of spawning cue occur in the spring and the USGS provided one way of looking it so the Service asked us to look at it. Fish and Wildlife Service asked that we look at what how often do we have a 20% increase in flow over a span of 3 days. Increased 20% in 1 day or 20% in 2 days or 20% in 3 days. How often does that occur historically? And then we said how long do we hold that increase in flow? We counted the number of days that we held that increase and that day is reported in the Summary and in the EIS.

As we look at the data this is looking at summer and this is looking spring so we found that in springtime the real reason you release the fish and the real reason you have the spring rise is to provide spawning cue and the Service agrees with us on that or we agree with the Service on that. Primary reason we put out the spring rise is to create a spawning cue. The question is to be what spawning cue do the fish want? And that's a question we don't have the answer to. Again, as Mike indicated, you go through adaptive management to learn that. You learn from spring rises; monitor those spring rises and in turn identify how successful the spawn that you had that year. If you had a successful spawn, a certain type of cue, in other words, you have a rise of so much for so many days. That gives you an idea what might be the fish requirements.

We come right out saying in the EIS, the reason you put out a spring rise is to

create a spawning cue for fish.

Now one more I don't have on here and I forgot it last night and I worked on these until one o'clock in the morning and I just was not functioning at 100% at one o'clock in the morning. I forgot to put on Tern and Plover Habitat and I apologize, Roger and Mike.

Tern and Plover Habitats—we looked at what islands were out there in 1991 timeframe. What was the size of those islands? And in turn, (I also don't have wetlands on here; gees, I forgot a bunch of them) we looked at what type of vegetation was on those islands and what changes of the water levels affects, first of all, how big the island is. If the water level is up the island gets smaller; if the water level is down the island gets bigger. As the water goes down, vegetation grows on that island. Longer you hold the water down the more vegetation grows on that island. But if you come out with flows and run water over top of that island you (inaudible) vegetation off the island. The model goes through and tracks how big the island is growing and shrinking and is there vegetation on it or is there not vegetation on it and it identifies how much acres on the islands that we surveyed back in 1991. How much is available for tern and plover habitat each year? Because terns and plovers do not like to have a lot of vegetation in those areas they build their nest—scratch their nest in the sands.

Also have the wetland models on here, well, for tern and plover we count the

number of acres that are available in each one of the river reaches we modeled down below Garrison, below Fort Peck, below Fort Randall Dam and below Gavins Point Dam. Your Summary and that's our number we did each year and we in turn summed them up over the years and divided by 100 again to come up with an average annual value.

Wetland Habitat—we went out and surveyed 42 acres or 42 sites, I think the number was 100s of thousands of acres is what we surveyed and we looked at what type of vegetation was there in 1991, 1992 when we did the surveys. They went on delta sites; they went on delta by the Cheyenne River; went on delta by the Morrow River; they went on the delta by, I think, by the Little Missouri arm; they did it at the headwaters of Lake Oahe; the headwaters of Fort Peck Lake. So we picked 42 sites along the lakes and river reaches to survey and identify what type of habitat was there. What type of vegetation was growing in 1991? What was the lake level in 1991? What was the river level adjacent to that site in 1991?

Then we developed rules for if the water comes up and that part of that site has one foot of water on it, what type of vegetation grows in that one foot of water on it. Cattails, what type of vegetation is that? Or if the water level drops and the cattails all die and all of a sudden trees start growing in there; so we have shrubs growing in there. So what type of vegetation would grow if the water levels dropped? We tracked how vegetation changed with time. Then there's a system of (inaudible) called (inaudible) system; I just thought (inaudible) until I was told

by a biologist (inaudible) system. That breaks these different classes of vegetation into different categories and certain categories are classified as wetland habitat and some are classified as riparian habitat. In fact, wetland and riparian habitat.

Yellow Do you have any data for the plants that no longer grown because they were
Bird: flooded out too?

McAllister: No, I don't.

Yellow Does the Army Corps?

Bird:

Hargrave: Not that I'm aware of.

Yellow Okay, so may I make a request for information from your biologist, plant scientist
Bird: (noise) or data regarding the plants and shrubs and trees that no longer grow there
because of the flooding?

Voice: The glacier there.

McAllister: I think you can kind of gather what that data was.

Yellow I'm asking you guys to do it.

Bird:

McAllister: Yeah, what I'm saying is the only way I know we could approach it right now is we would look at what type of vegetation is in the area, the headwaters of that and the river reach of that...

Yellow Exactly. We are going to need that before our consultation with the Army Corps.

Bird:

McAllister: We can come up with some of those.

Yellow And can you get that information for all the tribes?

Bird:

McAllister: Now when you say "type of vegetation" plants and stuff, I'm not sure.

Yellow We need a list of plants and vegetation that grew along the Missouri River prior to

Bird: the Corps destroying the Missouri River with the dam that no longer can grow there. That can't be found anymore.

McAllister: That will be in Section 4.

Yellow Just like you guys came up with endangered species; we need to know that same

Bird: thing about the plants. Okay. Education...

McAllister: We can come up with a list of those types of plants.

Yellow That's what we need. Thank you.

Bird:

McAllister: So anyway back to riparian and wetlands habitat and come up millions, thousands or millions of acres (inaudible), I think it's thousands of acres of wetland habitat that we monitored or we actually surveyed only thousands of acres. I think we did tens of thousands of acres surveyed. We took cross sections too. Sandbars and various wetland areas... what the elevations were across those sandbars.

Last and definitely not least—Historic Properties. We really wrestled with how to approach this when we started to study and tried to computerize it in 1991 and we finally decided that the thing that was probably most devastating to a site is to have the site eroded away. We said what caused the erosion and, of course, it's the wave action beating against the shore line and so we said well, let's just track the number of times there is a hit or there is water leading up against that shoreline potentially. So we looked at an eight-foot band of impact and any sites that were within that eight-foot band would be impacted or would get a *hit* that month from water. Because sometime during that month the winds are going to pick and the waves are going to beat against the shoreline and they are going to adversely affect that site sometime during the month. So again remember our models are monthly time set model.

Voice: How big were your waves?

McAllister: Wasn't necessarily the wave but we looked at an eight-foot band and (inaudible) we looked at assume the water was right at five-foot above the lake surface. It should also affect three-foot below the lake surface, so that wave does have an impact (inaudible) just not at the top of the wave. It affects a wider band. Either three or five-foot above and three or five-foot below and I have to look it up every time. It's something I don't remember off the top of my head.

Yellow Did you try it in different soil types?

Bird:

McAllister: No, we did not. We just counted the number of hits.

Yellow Did you (inaudible) freeze up and thaw?

Bird:

McAllister: No.

Yellow Well, we're not going to go in and do that anymore. We're not going (inaudible)

Bird: that.

McAllister: We don't *say* whether or not the site eventually gets eroded away. Okay, all we say is how often is that site *hit*.

Yellow Well, we (inaudible) want that because it's not just the wave action that's causing

Bird: the problem; it's wave action; it's freeze up and it's thaw; it's the different types of

soil that are there along the shorelines. It's impacted by, (inaudible) being out here, landscape farms, (inaudible) recreational. There are all kinds of (inaudible) hitting sites.

McAllister: You have to remember what our objective is, was to identify how the lake level is potentially impacting that site and so if the lake level is adjacent to that site there may be waves coming across and hitting that site. Now you understand there are other factors. We didn't identify is the site lost after 10 years; is the site lost after 50 years. We just said over 100 years you are going to have a certain number of hits on that site. The higher the number of hits, the greater the likelihood that that site might be lost. That's all we can say.

Just like the terns and plovers we don't identify whether it will be more terns or less terns; we just say there's more habitat for those terns. Same way with (inaudible), we say (inaudible) could be better or worse; we don't say whether there will be more or less fish out there. Spawning cue, we said spawning cue occurs more often or it doesn't occur as often or we don't say well there'll be more fish.

So we find a way to relate the lake level or river flow change to some factor that is important in terms of that resource or use.

Yellow Well, let's hope that your initial analysis of what's oppressing our sites doesn't

Bird: make the Corps come out sounding pretty good, you know.

McAllister: It doesn't.

Yellow Because I'll tell you what, there's a heck of a lot more that the Corps is doing that

Bird: is affecting our sites besides just the lake level and I really take the attitude
(inaudible) to make it look like there's not really much of a problem.

McAllister: No, it shows that there are lots of hits. What we had to do, we wanted to show that an increase in the historic property value was good and a decrease was bad. Well, the higher the number of hits is bad! So we then indexed the value. Basically we just took the number of hits that would occur and took a number that we used was larger and subtracted the number of hits from that. So it was always a positive number out there. But all the alternatives hurt the known sites.

Yellow There's the undiscovered sites too.

Bird:

McAllister: Well, that part we don't know because if you don't know where a site is, you don't know when you are impacting it. That's one thing we say in the EIS is that we may be adversely affecting the *known* sites and we feel the more we impact the known sites potentially we are impacting the unknown sites *less*. There's no way of knowing because you don't know those unknown sites. You don't know where they are and how badly you are impacting them. If it's an unknown...

Voice: What kind of logic is that?

Yellow Really! Not only that but there has been lots of archaeologists who have lots of

Bird: experience (inaudible) working on (inaudible), every last one of them will tell you that for every site that's known there are five or six times more. How can you say that they are going to be impacted less; I don't get it?

McAllister: Well, depends on what your assumption is. If your assumption is that if the sites, you know where the site is and it's down below this eight-foot zone. The reason why you don't know where the site is potentially is that it's under the water somewhere and you didn't survey it before you put the lake...

Yellow Oh, no, no. (Inaudible.) What I'm talking about are sites five to six times more

Bird: than what the Corps thinks...

McAllister: In other words, surveys...

Yellow And they are along the water.

Bird:

McAllister: Again the thing to understand is that we are trying to understand relative differences. We don't identify the number of hits. We want you to understand that if the number goes down that we present in the EIS that we are adversely

affecting known sites and that if what you say is for every known sites there are five unknown sites; we are also adversely affecting those five unknown sites too. That are above in the same elevation band as the known sites. Because we look at it in terms of elevation bands because the lakes are flat basically. They are not perfectly but they assumed to be flat. So when that eight-foot band or that eight-foot depth that we are looking at affecting an eight-foot elevation band on that lake. That eight-foot elevation band you know the number of known sites that are within that band, at least you know the number of both *known* sites that are in that band and if we say there are 50 sites within that band around the whole lake that are being impacted then we are hitting those 8 sights if that eight-foot band is hitting those 50 sites within that eight-foot difference in elevation.

And if we have 50 know sites that means, from what you are saying, Pemina, that there are probably 120 sites there.

Yellow Easy, that's not even counting (inaudible).

Bird:

McAllister: If we are impacting those 50 sites less or more then we are impacting those 120 sites less or more. That's all you have to gather from that. We are not saying we are going to erode 20 sites away this year or they are going to be lost or much like two years ago, not this year but last year, one year ago when our batch washed into the lake and exposed for people to come and pick out and so forth. We can't predict when that will happen. So all we can do is say that the lake is up there

where it's affecting those type of sites more often or less—all we can do.

Yellow Oh, it can be predicted, every spring, every spring and all summer it'll happen.

Bird: That's when not maybe to a point like (inaudible) but every spring and all summer until it freezes up again and even then there'll be exposure. But I don't see the value of knowing how many hits or (inaudible)...

McAllister: We've heard that comment a lot.

Yellow I don't see the value. I'll tell you all the lakes; all the water when it raises and

Bird: lowers and when it freezes and thaws it erodes the (inaudible) and the (inaudible) collapses; we loose sites and exposed materials. So what's the possibility you could look at the impact in a different way? (Inaudible) the impact in a different way because...

McAllister: Let me tell you what the guidelines for writing the Environment Impact Statement are. That is you write the impacts using the best available information. That's the first thing we take into account.

Secondly, what the Corps has done in this study is we were saying the best available information isn't good enough. We came out and said that right up front. Because we need to get better information, so we spent the first couple or three years getting better information. We developed these models. They didn't even

exist. We spent millions of dollars acquiring data, developing models. We made sure that the historic properties database was updated. We made sure that we got that data. Then is, Pemina, what you are saying is that that database wasn't completely updated because all the information wasn't in it.

Yellow It's not even *done*.

Bird:

McAllister: Yeah, I know. I understand. All I can do as the technical person is use whatever information I *have* available.

Yellow That's available information. Spent millions of dollars developing models.

Bird:

McAllister: So then in turn we developed these models and we got the results we got in 1993, 1994. We put out these EISs and each time someone says well, you need more information so in some cases we got that information; other cases we didn't get it.

We looked at what timeframe we were looking that we needed to complete the analysis under; we looked at how much it would cost to get the information and we made conscious decisions to get the additional information, take the additional time when our schedule would allow and when our funding sources would allow us to do that. Like I say, we didn't do everything that we were asked to do. For example, interior drainage, someone wanted to know what the interior drainage impacts are on the Lower River. All Lower River... we can't begin to do that. We

picked six representative sites and learn all we could about those six sites; learn all we could about historic properties on those known sites.

Ground water—again, people wanted to know what happened with ground water all the way from Sioux City to the mouth, I said we can't do that. That's too big of an undertaking. Costs too much; takes too much time so we picked a total of 4 representative sites; we started out with 5 but ended up with 4 representative sites. We learned all we could about those 4 sites. You try to find some basis on which to increase your understanding of a potential impact within certain reasonable constraints of what you can get done within a timeframe and the funds (inaudible). We increased the amount of available information in a lot of areas but not in all areas.

The next thing I'm going to say is that if there's an analysis that is not correct; it's okay to say it's not correct but you can't throw it out and not use it unless you can come back with a better way to do the analysis. That's a legitimate comment; come back and say you should have taken such and such into account and done the analysis this way. Not say the analysis is bad.

Yellow Is somebody saying that?

Bird:

McAllister: Some cases they are. (Multiple voices.) (Inaudible.)

There are lots and lots and lots of them out there.

Voice: This is only a small...

McAllister: Some will say to us, I live in school district number one in Fremont County, Iowa and you are going to affect my tax base because you are going to make another 50 acres of land that's not suitable or you affected the valuation on all the land along the river of my county by putting spring rise out. Your EIS is inadequate unless you can identify how many tax dollars I will lose for my school district. And there are literally thousands of school districts out there and that's one analysis we didn't do. Because we couldn't begin to capture that number. All we could do is we could say we are impacting this number of acres out there and then... Because this is not an EIS of 10 square mile area. It's an EIS of 3,000 miles of river that is impacting millions and millions and millions of acres and so all we can do with our study is try to understand the major impact to the best of our ability using the best available information within the time constraints we have to work in within the funding that we receive.

Voice: There's a present responsibility that (inaudible) understand. Where are these (inaudible)?

McAllister: Dan, I work with what money people give me and when they tell me I have to have something done.

Voice: Well, that was kind of one of the reasons I was making that point earlier about (inaudible). What is the economics of putting the dams in? What is it 23% of the acreage, is tribal acreage the whole 6 or 7 dams that go through; what percentage of the budget was (inaudible) and all that. There's not, you've got all this money that you got, we get just a little slice of the pie. I think that what tribes (inaudible). We are providing this for America and the United States and we took the hit; we provided all this power and energy and the recreation and navigation for America and we are 23% of that but what is the percentage of the pie, budget (inaudible). And I want to look at that; I want to focus on it—at some point in time.

McAllister: And that's a legitimate... there are a lot of ways I think that the information coming out of this Environmental Impact Statement that can be used in the future. And that's one of the things I can say as an individual, if I have any latency at all, at least we've started down the road of better understanding the impact of a system and be able to start getting at the answers that you want. We may not be able to fully get *all* the answers but we are moving in that direction and we are a *lot* further along than we were ten years ago in understanding this system and what its impacts are.

I've still got a few years to go before I retire and I've got to find something to keep myself busy so.

Yellow While that may be true (inaudible) it's still not enough to protect the tribes
Bird: (inaudible). We need information; you're right the info coming out of this EIS is something that can be used by our tribes for a while to come.

McAllister: And we hope it is. (Multiple voices)

Yellow We need other info to be brought to bear on your model because it's not going to
Bird: nearly come close to the truth of the impacts that we have endured on our sites.
We are not going to get the answers that are clear enough to show what has happened.

Johns: But, you know, I think that if we look at it from this staff-wise that we have reached a path equation that everybody agrees to—(inaudible) prevention. We can...

Yellow (Inaudible) that equation, Mary Lee..

Bird:

Johns: Well, I'm just saying that if we can come to an agreement on an equation so that there's a benchmark, say 2001, we all have agreed to this equation. This analysis, so therefore this benchmark is going to be from in the future, say five years, ten years, we have something we all agree to. The Corps has to agree to it; the tribes has to agree to it so that in five years with more serious impacts on tribal lands

(inaudible) you know (inaudible) where the (inaudible). Then we have an agreed data that we can then go back then and reassess the damage. That's why if we can agree; like we can disagree about a lot of different things; if we can agree on a scientific equation; maybe it might not be the best for us; maybe it might not be the best for Corps. But if we can come to some kind of a compromise out of (inaudible). Say this is what we are going to agree to; this is the equation we are going to use and from then on we will then assess the damages done to our property based upon...

Yellow The problem with that is we've been waiting for a formula/equation that
Bird: adequately and correctly reflects the losses of the tribes (inaudible); we don't have
the luxury of time to wait five years.

Voice: Well I'm just saying...I just used five years as a...

Yellow No, we just don't. We are trying to (multiple voices).

Bird:

Voice: Where are we now in the plan; where are we now.

Yellow This is the Master Manual plan and we waited a long time like everybody else for
Bird: this to come out. We need accurate data *now*. Our sites are falling into the river
now.

Voice: Right now, right now we don't have anything that we agree to.

Voice: Something cold by the time the public meeting is held. Go around to each of our locations? Is that possible?

McAllister: Proposed for...?

Voice: Well, on this formula (inaudible) 10 or 20% of what could be a comprehensive formula. (Inaudible) for the impact for cultural and historic properties (inaudible).

McAllister: There are people that are more knowledgeable about this than I am have talked about the need to—what can be done to improve this and they have not brought anything forth yet.

Yellow Bird: Maybe it is because nobody has asked for any, you know, expanded data. I guess we are asking now.

McAllister: We've asked in a lot of different ways, Pemina. No, we've asked our own people to come up with different ways and no one has come up with a concrete way that this is "better to do things" and maybe it's just because not the right attention is given to it; I don't know what the answer is why it hasn't been done.

But this methodology I developed this methodology myself because no one else was doing anything and we needed a number...

Yellow Bird: Well, I wish you'd talked to us while you were doing that. In fact, with the endangered species there's a comprehensive way to change the impact on the species that live in the river and depend on the water for life, right? There's a comprehensive way to gage all of the impacts. The same approach needs to be taken when it deals with our sites because we are going to get skewed data; we are not going to have the information *we need* to protect what little remains of our sacred and cultural sites in our aboriginal homeland. Okay? And that's what we are saying. I'm sorry the Army Corps spent millions developing these models. I'm sorry all that time was spent but you didn't consult us. Had you consulted us on these models we would have told you what *we need* in order to be...

(End of side 1 of Tape 5)

Yellow Bird: The wind, the sun, tourist, people moving, people driving on our medicines, we would have been able to tell you all those thing. I hear what you are saying but (multiple voices). Don't have the luxury of time anymore.

Voice: Pemina, in Master Manual itself.

Yellow We have to live with that.

Bird:

McAllister: Well, we are not changing the weather, we are not changing (inaudible, noise).

We are not changing because we are changing. (Multiple voices)

Yellow Not asking you to. Accurate data!

Bird:

Johns: Okay, so then could there possibly would it be possible for the tribes to request those entities within the Corps to begin developing this formula along with the tribes input? Is that possible?

McAllister: If the (inaudible) request and (noise) (multiple voices) what's...

Voice: But know that you...

McAllister: The issue gets to be what's (inaudible).

Voice: If you look at it and everyone is in agreement on this basis—a formula, then that's you benchmark and from that point on then you can determine the impact where everybody has agreed to a formula. From that point on then we all would have data that we agreed to.

Voice: Yeah, I would support that. I would say for the record that we should have somebody within the Corps or it wouldn't have to be—Historic Preservation

Officer, is (inaudible) still in there?

Hargrave: No. He's not anymore.

Voice: Or whoever designee is would start looking at developing the whole formula along with the tribes to look at and have something that's added to what you've done here, Roy, by the time we hold these public meetings. I know it's (inaudible).
(Multiple voices)

McAllister: We won't be able to do it. I'll be honest with you. We won't have (inaudible) before the hearings.

Voice: Maybe that's something that could be going on simultaneously.

McAllister: Consultation needs to take place on all four activities. A Master Manual is one of many, many, many Corps activities out there and when the Master Manual is on its track, been on its track... We've had so many different deadlines. This was supposed to be a two-year study. I was supposed to spend two years of career on it; by the time I retire if I'm still on it I will have spent exactly half of my 30-year career almost to the day on this project. It's had all this different deadlines; it's had all these different cost (inaudible); its had (inaudible) of its own. *But it's not the answer to all problems out there.* It's not the source of funding to those; it's not...

Yellow Bird: Right. We understand all that but we are telling you that we have to have certain information that deals with our sacred and cultural sites. Period.

Voice: Master Manual will have an impact.

McAllister: Yeah, when they come out and visit with you about Master Manual we should have, especially if we go on these trips to each one of the tribes, there should be staff from the district attending those meetings and someone sitting down and assessing under what authority or what fashion are we going to address all these different concerns. If the Master Manual concerns, we'll take ownership of it and move out on it. If it's some other area of concern; if it's another Corps area of responsibility *they* need to take ownership of it and move out on it.

Hargrave: I think the other thing we have to kind of recognize is that we don't know certainly all there is to know about cultural sites. Sometimes we talk about this adaptive management thing and we talk about it only in the concepts of the endangered species. It actually applies to a *tremendous* number of resources including cultural resources. One thing I had always hoped would come out of the Master Manual is that if we don't have every impact identified that we at least have processes in place to get through it.

So, for example, I just see this as a tremendous outcome. We do this Annual

Operating Plan (AOP) every year under the Manual we are operating. Well, see now we have these databases; the GIS database and the other database that is under development. Going to be tremendous tools here. We'll be able to look at the sites in that database; look at our annual operations; look at the elevation of those sites and we'll be able to actually determine at some point which sites in that database are most likely to be impacted by our operations that year. And that's going to allow you to get in there and access to identify what the sites are and get in there to actually protect the sites. I guess what I see coming out of the Master Manual, even if we don't know every impact, that we start looking at ways to get at it. One way to get at the impact is through some of the work the district is doing and through our Annual Operating Plan process; marry those two up and I think we are going to have a good look every year so that some of the things that have happened in the past few years...

Yellow Bird: Right, what you are saying is true, Rose. What you are saying is true. There's two new databases being created that will give us information on the... there's some studies going on about what some of the impacts are and we'll be able to gage. One of the things that Randy Behm had initiated in his what—ten months—tenure in his position and oversight to the cultural resources program, because of the internal peer review team that went in and took a look at what the people in that shop weren't doing and how it was affecting our sites this job was created. He was supposed to provide oversight to the cultural resources staff—our sites are falling in the water! Okay. One of the things he got off, in the short ten months

that he was there, he got two initiatives off the ground. One of them was to begin creating an endangered list site or site list, excuse me. That's not completed; that's not completed. That's really what we need, you know. We need that completed sites. The endangered site list needs to be (inaudible) all we got out of it was those materials that we requested yesterday. What are the most endangered sites that you guys know about; what's their status? What's making them endangered? What are you guys doing about it? All of that is true; all of that is true. Down the road we'll be able to use that data to force the Corps to fulfill its fiduciary responsibility and do bank or shoreline stabilization. Yes?

Right now today we are having an orientation meeting about your EIS and we are trying to tell you what we need before we can begin formal consultation with the Corps on the EIS. And what we *need* is a different model that's going to assess the impact to our sites so that we can come back to the Corps in consultation regarding the Master Manual that we all have to live with. Right? That's what we trying to tell you today. Today we need a different model that's going to assess *all* the impact to our sites. The same way all the impacts to the (inaudible) terns were assessed. All the known impact to the pallid sturgeon. Those were all affected, many (inaudible). Here we are talking about one impact. Wave action, okay. That's not going to give us the kind of data that we need to get the kind of shoreline stabilization Chamberlain, South Dakota has. Okay? Or Bismarck, all these non-native communities that are in perfect safety. Their shorelines stabilized or all of the cultural sites that are *not* associated with native people have bank

stabilization. Okay? That's what we are asking. That's what we need and we need it and we need it today, Rose. We are not trying to be rude here; not trying to be disrespectful; we are telling you what we *need*. Okay? In no uncertain terms.

Johns: In the office of Randy (inaudible), when Randy was in (inaudible) they are working on the computer models that identify all the sites on the computer and there is a...she's an archaeologist and she's on a daily basis all day long putting in the information so that we will, the Corps will have that information and it's based upon the Annual Operating Plan based upon the formula that people come and had agreed on it. Then we will have the data to be able to identify how much impact each sites will have.

Yellow Bird: I know I met Teresa over 18 months ago and at that point and subsequently several times since on behalf of tribe, *all* our tribes, I requested that data as it was completed and just yesterday Becky Otto told me no we couldn't have it until there was a final copy. So I called up (inaudible) report—she's mailing to all our tribes. What's been completed so far? You see this is all part the frustration you are hearing is that we made repeated requests for that. I met Teresa a long time ago. We never...

Johns: The whole point is, I think that if we can work towards solving these problems.

Yellow That's what we are trying to do, Mary Lee.

Bird:

Johns: Well, I get this feeling that... I'm from Cheyenne River and everybody has problems but it's not going to help us as tribal people to talk to people that have no control over that audit. Rose, and I'm sorry I can't remember.

McAllister: Roy.

Johns: Roy, who is in control of that audit? People that should be if Becky was sitting here or if Candy was sitting here then that...

Voice: For the record I think we are stating we need (inaudible).

Johns: Okay. (Multiple voices, inaudible)

Voice: Targeting Rose or what we are stating for the record. Also for the record back to the wildlife, repeat that this history (inaudible) technology (inaudible) computers can tell us these endangered sites and the impacts (inaudible). Even in an aspect of 100 years or 50 years at least of the Corps records there should be the record of how much erosion and how much sites have been exposed, we should be able to use that information, put it through technology and come up with some kind of a model that I think would be... that will show us the kind of budgetary concerns that the tribes have along the river. (Multiple voices)

Johns: See if we work together on that.

Voice: It looks like there hasn't been a focus within the Corps to provide that. Then I think...

Johns: See that's what I say.

Voice: I think Roy is saying that. (Multiple voices)

Yellow: I'm sorry, I'm really sorry for standing up bringing my intelligence into this.

Bird:

Johns: Excuse me, please. Like I said I'm a member of the Cheyenne River Tribe. I have been working with tribal government trying to help tribes and government entities work together to come to a point where *tribes* are best served. That's what I do best. I'm an old chief; I have 4 grandchildren; I have spent 30 years of my life working to help tribes. I have a whole history from the time my great-great-great-great-grandfather we have been working to help tribes. And all I'm asking is that we come together and that we develop a process in which tribes are best served by an entity that is there willing to serve the tribes. That's all...that's what I'm asking. And granted I haven't worked for the Corps as long as individuals have but I am in that office and if Chairman Hall asks me to follow-up on something I will guarantee you, Chairman Hall, that I will follow-up on that. And that's all

I'm asking right now is that we come... the whole important purpose of this meeting, Tex, was at Rapid City. What we said at Rapid City, if you recall that meeting, is that we were going to come here and we were going to learn as much as we could on how we can impact the Master Manual. So right now it's a learning process; at least that was from our viewpoint. That this was going to be a learning process for the tribes on how the data that is being presented in the EIS— how we can best respond to it so that if there is changes, there are needed changes, that the Corps can then respond to us then that's where we need to be. And this data that they are providing to us, I think it's vital to the Santee Sioux Tribe, to the Cheyenne River Sioux Tribe and to the Royal Pheasant Sioux Tribe, to Fort Belknap and to Fort Peck.

So that's why I believed that we were here. Maybe I'm wrong; maybe I have come up with a different scenario for this meeting. It's not that I think that I need to be informed maybe we are off on a different path.

Hargrave: Right, just maybe this would be a good time to take a break, *but* (laughter) I gather what I am hearing is loud and clear. I guess what I am hearing, Chairman Hall, is that based on what you've heard today you don't think the cultural resources analysis is adequate. That's a perfectly legitimate comment for the tribes to make.

Voice: I have a question before we take a break. You are the ones that came up with, Roy, (inaudible) from Cheyenne River. You are the one that came up with this

one analysis of a wave action hits in that?

McAllister: Yeah, I did, I sat and visited with... we had an in-house archaeologist that we were using at that time. He and I sat down and (inaudible) come up with a methodology for the project.

One thing that we heard over and over again that two or three of us engineers that work on this and a couple or three comments of his it is difficult to get people to quantify things. We needed to get away from this plus, plus, minus, minus mentality in the EIS and come up with ways of (inaudible) numbers. That was my objective all along; I tried working with archaeologists.

Voice: I've got a, I think it's a question—maybe more of a statement.

It's basically this. You were doing the cultural resources. Did you or anybody in the group that you worked with think to get on the telephone, contact my office, contact Fremont's office, contact any of the tribal offices for any type of information that you could have inputted into this, maybe not this particular analysis or hypothesis but to something else. Because what I see here or heard here was some very valid points and again I feel like our tribes have been frozen out of your analysis simply because you did not contact us. My buddy over there looked at me when you were talking about when brought up about what types of species and stuff or vegetation, plant life, things like that aren't there anymore.

On Cheyenne River I can tell you *exactly* what's not there anymore. And we hold this information and you are not calling in and saying can you contribute something to this. We are trying to work on this impact; this hypothetical impact—it's not hypothetical anymore it's a natural impact. Could you give us some type of an idea what you've seen?

You haven't contacted my office; I can only speak for my office but on the other thing I wanted to say is any *non-Indian* landowners that live on that river. I live on that river right above highway 212 bridge. Every day I've watched those points below my house erode out. *Every day!*

So my question/statement is why didn't you call us? Did you call anybody else? Or is this like a group thing where you get a couple 100 hearts together and you sit in a room and say (inaudible). *That's* the delay. Because I think what we were supposed to be here about; you are trying to save some time (noises) reservation—that's my town. (Inaudible.)

Voice: If you need to know something about the Indians—call the Indians. Don't call the archaeologist! Call us. And now I'm ready to go home. (Laughter.)

Voice: I met with this Ed (inaudible), is that his name. The archaeologist. (Inaudible) trying to do our CRMP along the Missouri River. So I told him that he needs to

get hold of all the Medicine Men with every tribe; sit down with the Medicine Men to identify some of the (inaudible). One Medicine Man told me that they used to utilize 102 plants along the Missouri River medicinal plants and herbs. Those are the types of information that we think would be (inaudible). You need to contact our offices instead of talking about economics.

Voice: We have (inaudible).

Voice: (Inaudible) still in the distance or some (inaudible) because of this (inaudible).

Voice: Well, they're lost due to a construction of (inaudible) lands. There are a few places they could give you medicinal plants and herbs but unfortunately they are on non-Indian lands (inaudible). And incidentally, Bozeman lost 1400 acres. Prior to 1978, we were a five-colony reservation. We are not included in the (inaudible).

Tex Hall: For the record, you should be. (Inaudible.) (Multiple voices) (Inaudible) Three Affiliated support that. I appreciate the Corps coming here today; you couldn't fly in because of the terrorist attack on the United States. (Inaudible) appreciate that very much. (Inaudible) joint task force very appropriate. There's no reason why you can't do a joint task force (inaudible) with some representation by the Corps to work on this specific issue and come up with one that we can totally agree on. I don't think (inaudible) Army Corps and Tribal Joint Task Force (inaudible).

Hargrave: Who would we go to, Tex, to find out who should be on this task force?

Tex Hall: (Inaudible). Maybe come back over a (inaudible).

Voice: There's one other thing that on the medicinal plants when the Corps is working on this called Recreational Rivers and that's part of the south of Gavins Point— between Gavins Point and (inaudible) State Park which is on the Nebraska side. There is a certain amount money to try to recreate the river in the original form and part of that they do want to work with tribes on identifying medicinal plants so that they can work with landowners who will agree to allow and traditional people to be able to access those traditional plants. That is another, Becky Otto, who is a PM; what does PM mean?

McAllister: Project Manager.

Voice: Project manager (inaudible).

Voice: Project manager for the recreational river and one of the things that she has asked me to do to identify traditional leaders so that they can work with them on that. So that is a start but that's not part of the division; it's part of the district. And I'm learning that division and district are a little bit different. Although they're the same, they operate differently so. That's another area that maybe this task force

can follow-up on and work with Becky Otto on the recreational river.

Hargrave: Okay, well we have some choices here. It's about 10 after 11:00 already. We could go ahead and just break for lunch and come back like 12:30; otherwise we could take a break and then come back. So why don't we go ahead and break for lunch and we'll plan on being back here at 12:30.

McAllister We need to make a change to the handout that you got between this morning when we sent the disk with the file on it down to the office to get copies made and when we broke for lunch I made a change on this page. The two numbers I changed are these two so when you look at the page and under Hydro you'll see some numbers. There are 600 and some and you may want to pencil in 741.5 and 747.4 and I don't know what the percent was on that.

Voice: That was just in the handouts they just gave out.

McAllister: Those handouts, if you don't have one of these you are more than welcome to have one. They are not best sellers so I can't charge you for them. Just curious, hydro was .9 now it's .8— big difference. So the three numbers you need to change are this one, this one and this one.

The reason I decided to why to change them was because you guys had the Summary and the Summary—these are the numbers out of the Summary. Last

night my mind wasn't working clearly, I forgot where to get the numbers and correct those. That's why I'm standing up here talking and all of a sudden – ha! So I went ahead and changed it.

I started to go through just to show you the numbers that show up off and on in all the bar charts in the Summary. Just to get you a feel for the relative value of the economic impacts as far as how they (inaudible) the different categories. I want to show you how we did the computation to get the number that is in the Tribal Appendix tables. We talk about percent changes so I'll just show you how we get that number.

First of all, total economic benefits to the system are \$1.85 billion a year; so the system does provide a tremendous amount of benefits to the nation. The better share of those benefits are divided into two categories: hydropower and water supply provides about \$1.4 billion of the \$1.8 billion. Major part of them. Slack and coal comes in a not too far distance third but then you start going down into recreation and navigation, both of those play a very small part in the total economic development picture from a national perspective but yet those two surface the most often in discussions. People talk about \$85 million worth of recreation versus \$7 million in navigation. That number comes out all the time. I see how people get it because they look at bottom line and presentation of numbers like this and, for example, Bismarck (inaudible) printed in the paper one time last winter, what makes the decision so hard? It's 85 versus 7 so you do

what's in favor of recreation and move ahead and forget about navigation. Well it's not that easy. Once you get the EIS if you are one of those that elects to have a copy of the EIS to look at. You start breaking down recreation benefits by reach. That's what Tex Hall would like to have us do talk about what happens to each project.

There are three projects that are affected adversely in droughts by the operation of the system during droughts. That's Fort Peck Lake, Lake Sakakawea and Lake Oahe. Those benefits in those three lakes total \$32 million out of the \$84 million. So three lakes affected—\$32 million.

When you look at this number, you also find that \$20 million of that is the Lower River. Another million dollars of that is for recreation in the Fort Randall downstream reach. And when you contain water in the lakes during the drought that means you have less water release in the river reaches so recreation value goes down if you leave it in the lake.

When you start comparing the impacts of leaving the water in the lakes versus taking it out you don't look at resource \$85 million versus \$7 million—it's a \$32 million of recreation on the upper three lakes versus \$20 million of recreation on Lower River plus \$1 million of recreation in the Lake Randall reach plus \$7 million of navigation benefits, which makes it a \$32 versus \$28 million dollar comparison and that's pretty close for me. That's why our decision is not an easy

decision to make. Go back to the basic argument that a lot of people use—85 versus 7, it's not that simple. 32 versus 28.

That's why I threw those numbers up there and in the big scheme of total dollars, if we were to make our decision based on what factor drives the economics, we'd make it on hydropower. When Nick gets up and starts talking about hydropower a little bit, he'll be talking about tens of millions of dollars and if he were talking about total revenues on the annual basis, he'd be talking \$200 million a year which dwarfs these two numbers.

Just to give you a little bit of a perspective how the numbers fit in. As you can see the changes are actually relatively small when you come across the line here. This is the Modified Conservation Plan (MCP) so none of the Fish and Wildlife are in this for the Gavins Point options. Because there's no spring rise at Gavins Point, no lower flow there. But this is the basic plan that has the Gavins Point options added onto it. I just happen to have this on a slide and I was looking for stuff that I had on existing slides last night in my computer to paste into this presentation.

So let's look at how this number is generated. Because this is the number that shows up on the next set of tables we'll be looking at. And if we look...

(End of tape 5)

Tape # 6

September 13, 2001 P.M., Roy McAllister – Corps of Engineers

McAllister: Where there was combination of vegetative sand and bare sand and so that year you may not have had any terns or plovers to build a nest on some of those islands. But what you did is you created clear sand habitat for that next spring. So next spring when the flows are actually *lower* in that reach you'd have more bare sand habitat exposed in the same way the third year. You'd have lower flows in that reach and you'd have more bare sand exposed. Well in the meantime grasses and different vegetation is starting to grow and so you start to lose habitat but that fourth year all of a sudden you run the high-flows across it again; scouring the vegetation off and you are off and running again with a clear sand and then the scouring of the vegetation.

So you set up that three-year cycle and keep a lot more clear sand habitat available for the terns and plovers. That's why that number increases quite a bit. It also goes up higher when you start putting out the spring rise below Gavins Point. The reason for that is that again (inaudible) that by (can't remember your name right now) but anyway she asked questions. Do the flows change when they get the water down for the spring rise and higher fall flows and lower summer flows, they do change in the (inaudible) reaches. So trying to get water down to Gavins Point, put the spring rise out; raise some higher flows; (inaudible) a little bit cleaner in

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the Garrison reach. Create lower flows in the summer; not lose much water in the summer so you have lower flows in the summer in the Garrison reach later than you normally have under the current Water Control Plan (CWCP) and so you expose just a little bit more sand and so the number goes on up from 316 range up to the high 300s or around 400, don't know the what the exact number is. So it's beneficial to put a spring rise out below Gavins; it helps the Gavins reach (inaudible). Just upstream from Randall reach and then on up into the Garrison reach. It adversely affects the Peck reach and what I'm talking about kind of goes to pot on that reach but I'm not sure exactly why that happens but anyway it does happen.

Wetland Habitat—in the 42 sites it just sums up to 156,000 acres of wetland habitat in those 42 sites and goes up to 157,000 acres. So very little change between these two alternatives. Riparian habitat drops 2000 acres. Well, when we surveyed the sites they were a set size; so one type the habitat goes up chances are the other type of habitat will go down and you also have bare sand habitat and open water habitat on those sites. One type of the habitat goes up; maybe the other goes down. That's what we found. That is indeed what happened.

Then historic property, again, go back it shows a decrease of in the index of about 140 and that's a 2.8% decrease.

Voice: In what?

McAllister: In that index, it gives us an indication of how often the thing was hit. How many of those hits occurred. The lower this number the higher the number of hits—and that's bad. Meaning that more times that sites are exposed to the impacts of erosion.

And again you can see the percent changes raise. The big ones (inaudible) river, drops seven almost eight percent. Tern and plover habitat goes up 43% so the unbalancing of the system was very beneficial tern and plover habitat.

Well, this is what happens on a total basis for these two alternatives and what you are interested in is something we have never done before in the EIS and that is sit down and talk about it and how it impacted reservations in Montana; how has it impacted reservations in North Dakota and South Dakota and so forth.

We elected to, for this EIS, identify what happened on a reservation-by-reservation basis. So we looked at the Fort Peck Reservation reached downstream from Fort Peck Dam, the Fort Berthold Reservation in Lake Sakakawea, the Standing Rock and the Cheyenne River Reservation on Lake Oahe, the Lower Brule and Crow Creek Reservations on Lake Sharpe, the Yankton Reservation combination of Fort Randall or Lake Francis Case reach and reach downstream from Fort Randall Dam and then the Santee Reservation on headwaters of Lewis and Clark Lake. There are a few acres of (inaudible) tribal lands in that same vicinity. So we looked at

the potential impacts to those lands that are essentially near the headwaters of Lewis and Clark Lake. We looked at Winnebago and Omaha Tribes downstream from Sioux City on the Lower River reach there and then the Iowa and the Sac and Fox Reservations down on the Nebraska/Kansas border area of the river.

So there are tables set up for those reservations and this table is presenting the relative difference from the current Water Control Plan (CWCP) the percent change from the current Water Control Plan that I showed you a little bit ago how we compute that.

So this is saying, just to give you an example, Modified Conservation Plan (MCP), we looked at that number a little bit ago. Let's just drop back that one slide. Overall wetland habitat improved by .9% but if you look at the reach—the Fort Peck reach—where the Fort Peck Reservation is the Modified Conservation Plan improves wetland habitat *in that reach* by 3%. So that reach is one of those reaches that is helping to have the overall percent change go up. Three percent improvement means that that reach is following a positive direction. If we go through keep an eye on this block here and they may not all be positive; they may be some negative, some positives but because it's the positive of this reach it's following the general trend of the overall and that is a small positive change.

When we add the spring rise to Fort Peck and to the Lower River at Gavins Point it has a negative impact to wetlands in that reach. I can't tell you of the

mechanism that causes that, I'd have to go in and look at annual data, eventually I could come up with the answer if I looked long enough. And I've done that on a lot of different resources but I haven't had time to look at why all these number are what they are but the bottom line is the spring rises from a wetland standpoint are not good in the Fort Peck reach. Riparian habitat changes are essentially zero in that reach.

Tern and plover habitat—as I said earlier was unbalancing (inaudible) tern and plover habitat in that reach. But for the spring rise combination of putting the spring rise and this has the spring rise at Fort Peck in it. So these both have the Fort Peck spring rise. This is caused by the spring rise at Gavins Point Dam. The kick back affects upstream that Ms. Madison was talking about earlier. Are there changes in the flows between those reservoirs within the system to create the spring rise below Gavins? Yes, there is. Does that have an impact that's different than not putting it there—definite change in the Fort Peck Dam? From a positive 61 or -43%. Yes?

Voice: Why is there a difference the (inaudible) on these? (Inaudible) Fort Peck Reservation (inaudible) alternatives (inaudible).

McAllister: There are two sets of them. I became aware of this about twenty minutes ago when Mike brought it up to me. There are two sets of these tables in the Tribal Appendix. We analyze two different sets of alternatives in this Revised Draft EIS.

We have Chapter 5 which is I have here you can see vertical voluminous type amount of information. Chapter 5 we evaluated the sets of alternatives and sent them into the Corps for consideration. In other words, following the preliminary Revised Draft EIS that we circulated in August 1998, we encouraged different entities to submit alternatives for us to consider as we moved ahead towards identifying a third alternative. We evaluated each of those sets of alternatives in terms of trying to understand the things that we liked; what type of support was there out from across the basin for those types of changes. We shared this information with some different groups. For example, the group asked us to evaluate certain alternatives; we shared that information with them so they could see how well their alternatives were forming. American Rivers submitted an alternative; they have the results of that analysis for about a year and a half now.

Chapter 5 just compiles all the information that we developed over the last little over a year and a half on those alternatives submitted to us to consider. Then we sat down and looked at all these alternatives or impacts; we said okay let's select our own plan basically.

Turns out the Modified Conservation Plan (MCP) uses the conservation measures for all of the Missouri River Basin Plan that was submitted to us for consideration. We used that conservation plan. All the plans, when we develop a total plan for the operation of system we have to identify are we going to change how we operate in drought. That was picked off the study to begin with. Then these other Fish and

Wildlife issues surfaced throughout the study some were there already being studied and we had to decide whether we were going to do the U.S. Fish and Wildlife needs in the basin.

So different components were added to that conservation plan to identify a total plan that addressed the conservation need during drought as well as the Fish and Wildlife need throughout the whole period.

Voice: Roy, those percent changes; are they for the next year or for they for the life of the Master Manual that's implemented in some fashion or five-year period or what is the percent change?

McAllister: They are based the average annual benefits over a 100 year period of analysis. So we looked at what would have happened from 1898 until 1997 as we operated with inflows and stuff that came in during that period operating the system through that period. So it's an average of 100 years of data.

Voice: For which tribe?

McAllister: These are set changes using, again to go back one chart. This is the average annual value over 100 years all these numbers at the top are the average annual values from 100 years of data.

Yellow So this is one that the tribes should be...

Bird:

Hargrave: You are talking about the sets of alternative. I think for the discussion today we should focus on these...

McAllister: Rose, you have to look at the ones that have this on top.

Hargrave: Right.

McAllister: GPs, GP alternatives.

Voice: So this chart here in the Appendix the MLDDA (inaudible). These are alternatives submitted to you? What you did is you lumped these together and you (inaudible).

McAllister: Well, we looked at what things did we see that we liked and what things didn't we see that we didn't like or what things does basin tell us they liked; what things did various entities tell us they liked and we came up with our own plan picking out the parts that we liked the best. For example.

Voice: (Inaudible) lots of information out of these biological opinions Fish and Wildlife Service and Missouri River Basin.

McAllister: Yes, right.

Voice: (Inaudible) well, that's I asked. Do you pull your information from here to get to that?

McAllister: Right.

Hargrave: Yes, we did.

Voice: Well what happened to Rosebud now if you are doing a 100 years of studies on Fort Randall Dam on the west side of Fort Randall Dam?

McAllister: Right now we do not have a separate table for Rosebud; it's not to say we can't put one in. When we looked at, there was what one apiece for 28, 29, 30 tribes total in the basin and we looked at the impact to just those tribes that has lands adjacent to the or very near in case of (inaudible) tribal land to the Mainstem of the Missouri River. Now I don't know if Rosebud has land adjacent to Fort Randall Dam.

Voices: Yes, it does. (Inaudible) county.

McAllister: But are the lands within the county of that or are they...

Voice: Land adjacent to the Missouri River.

Hargrave: We need to add Rosebud.

McAllister: Do you have any recreation facilities affected along Fort Randall Dam or the Lake
(inaudible)?

Voice: (Inaudible.)

McAllister: Okay.

Voice: EDA (inaudible) and it sits on the water still, I need a number on it.

McAllister: Okay.

Voice: (Inaudible) ignored all that?

Voice: I don't think we ignored it; it's just an individual that made decisions (inaudible).

McAllister: But we will, we can fix that. That's not that difficult to fix. We'll go ahead and
add those in.

Yellow Are there any other tribes that are not on this section to be added? (Inaudible)

Bird: understanding is a whole bunch of tribes that have interest in the sacred and

cultural sites that may not appear on (inaudible).

Voice: (Inaudible) 1868 Treaty the whole treaty boundary was the entire Sioux Reservation.

Yellow And so which tribes are missing (inaudible) We need to add them too.

Bird:

Voice: They have land adjacent to the...

Yellow Well, they have site...

Bird:

McAllister: I'm telling you what our criteria is, okay? Our criteria is for picking this if you have a recreation site adjacent...

Yellow Right.

Bird:

McAllister: Or lands...

Yellow I know what your criteria is but we have our own. And there are tribes that have

Bird: interest in those lands whose interest are not being addressed. They are sovereign nations that you have to consult with them (inaudible).

McAllister: Well, that's up to other people other than me. I just do what I'm told to do.

Yellow Right, but this is the time we are trying to bring it up.

Bird:

McAllister: Well, one of our people decided which ones we have. We've got a little bit of time to get them in.

Anyway to continue on. I'm showing you basically how to use the table and one thing that I said in the document, we didn't highlight the areas that had a 0, a 1 or in this case there is no -1 on here. One reason we don't do that is our models are not perfect. We've already discussed how imperfect they are. They are imperfect in a lot of different ways and one could say that a +1% change could easily have been a 0% change or could easily have been a -1% change. So we are not going to highlight that. But that is still up to the individual tribe, the individual person reviewing the EIS for what their various concern are and make that decision for themselves. So just because I elected not to highlight that one, that one may be important to a tribe or it may be important to Western Area Power Administration (WAPA) or whatever. You may still want to consider the +1s, the -1s and the 0s. It's just that we elected not to highlight them. We elected to highlight anything that was -2 or higher in the negative way or +2 or higher in a positive way. Just to cut it and help people focus on what were more significant changes.

Voice: (Inaudible) if you looked at that River Warmwater Fish Habitat line (inaudible); none of the alternatives (inaudible) have they are listed there as they are

(inaudible) benefit the warmwater fish then obviously that not correct (inaudible)
you even talked about modifying they flow.

McAllister: You are up with Fort Peck Reservoir?

Voice: Yeah.

McAllister: That's one thing I say in the EIS is that those numbers do not have that. The
model can...it doesn't discern whether water runs over the spillway or...

Voice: So how do you draft comment to address that in the EIS (inaudible)? I mean that's
what you want to know also isn't it?

McAllister: What I would prefer to how you address what's in the EIS itself and that is
knowledge of that issue that adequately addressed in that. We have a model that
can capture that factor and so (inaudible). Your name is Deb, right?

Voice: Yes.

McAllister: What Debbie is getting at is that at Fort Peck we are planning to look at the effects
of putting water over the spillway versus running all the water through the
powerhouse. What we do the Service...what we modeled was a spring rise of 23-
kcfs out at Fort Peck Dam. Of that we anticipated that we would release 4-kcfs

out of the powerhouse and the other 19-kcfs would go over the spillway. We determined the spillway is adequate to handle that on a recurring basis and so forth. The reason for that was the negative water flow aspects downstream from Fort Peck Dam is that the coldwater releases are affecting some of the historic uses there and in particular the native river fish that use that river reach and one way to develop those species of, in this case the pallid sturgeon recover and other species to keep them from becoming endangered (inaudible) species is to raise the temperature of that water. So the Service has recommended as far as a reasonable and prudent alternative biological opinion is to put out the Fort Peck spring rise and to put water over the spillway.

Our model doesn't capture the fact that water is going over the spillway. Just sees that there is a release of 23-kcfs of which it knows that only 15-kcfs (inaudible) the rest of it comes from somewhere but doesn't acknowledge that it's going over the spillway and warmer water. It just isn't all coldwater like the powerhouse release is.

Voice: Roy, does the EIS select data (inaudible) discussion with (inaudible)... a little bit, you know model.

McAllister: Yes, that in the... presents the data but it says the data is not accurate.

Voice: So are there any other caveats like the wetlands or the plovers that we should be

aware of too?

McAllister: No.

Voice: Just for the rivering fish?

McAllister: Well, the only other caveat... I didn't say it in there but hydropower is the same way. Assuming about 23-kcfs, 15-kcfs is coming through powerhouse but in fact maybe only 4 will, maybe 7 will; we don't know really what the mix will be long-term. That will be determined by the work we will be doing in the next few years.

Voice: Need to add something to your answer, Roy, to Deb's question is that concerning plover model needs to be qualified because that particular model does not reflect creation of new habitat. So scouring the habitat (inaudible), but in 1998 after the high-rise of '97 the flows of '95, '96 and '97 essentially created a scenario where we had tremendous amounts of high elevation sandbar habitat created through the system. That particular model does *not* address that. Therefore, (inaudible) of tern and plovers, sandbar habitats that have been developed in the last few years are not reflected in the model or in any of the analysis. I think that's something important that should be addressed in...

McAllister: As stated within each section when I start to talk about plovers we describe very briefly what was the process that derived at the bottom line number? And how we

did the analysis and one thing that we acknowledge on the tern and plover is that it does not. The model that we have does not model geomorphic processes. In other words geomorphic means that the Lumina, sediments and whatever (inaudible) in the riverbed and so forth that there's nothing they would try to develop a model that could tell us as we changed flows how many acres of (inaudible) did you create; how many acres of sandbar did we create; how many eroded away with time and all that. There's nothing that can definitively tells us those numbers and so as a result we couldn't add that to most of the models. When we first developed the model we weren't going to bother with vegetation because we didn't know how to approach it but when we developed the wetlands models he says well, gees, that same thought process is applicable to growth of vegetation on sandbars and islands so we added that to most of the models. If we knew today how to change to address the geomorphic processes of changes in flows creating or losing sandbar habitat, we would add that into the model but right now we don't. We can't define that.

Hargrave: I guess, Roger, that's captured in the EIS is how (inaudible).

McAllister: But even if we wanted a greater amount of habitat, I think we would see that tern and plover habitat would increase and decrease. Now it may not do it by (inaudible) come back to that two sites earlier. We were told to go back and look at our hydropower analysis; we had the right numbers in there. We redid the (inaudible); we had our hydropower center of expertise look at it and they gave us

new numbers to use; they raised these numbers from 600 and some to 700 and some; changed that percent from .9% to .8%. It made not change in the bottom line, okay? So if we were to go through and do the same thing on terns and plovers, I venture to say that it's not going to change a lot from this. It might because this is the process that is affected directly by flows. The hydropower, the changes we made there were not directly affected by flows; it was how do you compute the cost of that replacement capacity and energy somewhere. It was not related to flows, whereas the tern and plover is related to flows. The geomorphic process is related to the flows that are in the river. Maybe I'm wrong they may completely change the analysis if we could add that component. We have to go with what information we have.

The same way with historic properties, you go with what information you have at this point in time and you can elect to use the information or you can elect to ignore it. All we've done is just laid it out there for you to consider as you decide if this alternative is good or bad for me. And again, even the small changes may be important to you, because (inaudible) see in it, they are not important to you as you read the document.

I've got recreation on there. Fort Peck Tribe does have some recreation facilities down along the river but again, the changes occur. No change is a positive change so Fort Peck Tribes; the Assiniboine Tribes do all these alternatives and is positive from a... no change from a recreation standpoint.

Water supply what use the tribes have for the water supply in that reach is all positively affected.

Flood control—we are putting out higher spring flows so one would anticipate that there might be some problems from a flood control standpoint.

Again we are trying as we work we move ahead. We are trying to identify triggers that tell us that maybe we need to shut off the spring rise. If something's happened like Milk River all of a sudden has an increase in flow or (inaudible) River has an increase in flows and we see some potential flood problems coming we can maybe take some actions to prevent that 2% loss in flood control benefits.

But the model we are assuming there is nothing that stops us from changing the flow the model doesn't put out. In real life, there may be some actions that could be undertaken to shut off the spring rise if a certain trigger was reached.

River Warmwater Fish Habitat—we've talked about that and we can't handle that.

Voice: On your minus number, are these broken down to categories that (inaudible) whatever? As to need?

McAllister: No. Again that...

Voice: I guess a -14 impact, what does that tell me?

McAllister: It just tells you it's a 14% loss in that value. Whatever the factor is in the case of 14 in the case here of wetland habitat you will have fewer acres over the long run, fewer acres of vegetation that grows in this one wetland site or two wetland sites that were evaluated in the Fort Peck reach of the river that will have... it doesn't show much change wet, woody vegetation. It shows a big change is wetlands vegetation so my guess is it's either going to be clear sand or open water habitat.

Hargrave: But it does change from the current water control plan.

Voice: In the EIS.

Hargrave: Well basic, how current water control plan could affect those over the long run if we were to operate for 100 years, how would that wetland change over a 100 year period?

Yellow: In the EIS are we going to get *clear* text that explains this?

Bird:

McAllister: Probably not, I'm not a very good writer sometimes.

Yellow Well, if it depends on you, can we have... let me rephrase that. In the EIS we
Bird: would like clear text.

McAllister: Are you insulting me right now? (Laughter) Just kidding, don't take me seriously.

Yellow Well, don't take me personally because it doesn't have anything to do with you.

Bird: For my tribe, we need clear text that explains these charts. Because I've been really trying really hard to pay attention and I'm just not getting it. This stuff doesn't make a whole lot of sense to me. So I need clear text to tell me, the gentleman here, he said this -14 what does that mean? You clearly explained what it means but we need that text in the EIS too. And what's this NA; are you saying that all of those are alternatives for historic properties are not going to have... that it doesn't apply and there's not going to be any change?

McAllister: It's not applicable because we have no data for that reach; we have no data for the Fort Peck reach.

Yellow Did you will try to get some data for the EIS?

Bird:

McAllister: No.

Yellow Why?

Bird:

McAllister: (Inaudible) not to do it. We went with our best available information. That's all I can say, Pemina. We did not have any information.

Right now.

Yellow Say it again! I want to (inaudible).

Bird:

(End of side 1 of tape 6)

McAllister: They are going to issue a contract with the Fort Peck Reservation to have them to go out and do a cultural resources survey so that in the future we have appropriate information to use for this reach.

Yellow Well, I just asked you are you going to get some information and you said no.

Bird:

McAllister: We won't have it in time to use in the EIS, *if* the EIS stays on schedule.

Voice: But this contract is ongoing right now?

McAllister: It is ongoing right now?

Yellow But the info is not going to be the EIS? So how is Fort Peck going comment?

Bird:

McAllister: Is it Peck? I don't know. They won't have that information to comment on that?

Yellow This is astounding!

Bird:

Voice: (Inaudible)

Yellow Did I hear you correctly?

Bird:

McAllister: I don't know the answer to the question.

Yellow We are here to talk about a Master Manual and we are not going to have any

Bird: information to comment on where our sacred and cultural sites are concerned?

McAllister: Yep, on that reach.

Yellow And you spent millions of dollars and all these years getting information about

Bird: terns and plovers but there's *nothing* for our *sites*?

Hargrave: Not for that reach.

Voice: (Inaudible.)

McAllister: (Inaudible)be able to use the Fort Peck information for any tribes on Fort Peck

Lake and we used the Garrison or Lake Sakakawea information.

Yellow Okay now slowly repeat that. I'm going to write this word for word. I'm quoting
Bird: you.

McAllister: Any tribe that is located...

Yellow No, no. The decision was made to issue a contract of what?

Bird:

McAllister: The Fort Peck administration.

Yellow But that isn't in your first statement. You said (inaudible) not getting more

Bird: information and that the decision was made not to. Who made that decision?

That's what the (inaudible).

Roy said the decision was made not to get any more information.

McAllister: (Multiple voices) (Inaudible) we made a decision on the best available
information—first.

Yellow Who's we?

Bird:

McAllister: Whoever the team members were and there was no decision to move ahead with

surveys on the river reaches—the river reaches...

Yellow To go with existing information.

Bird:

McAllister: We did no cultural resource work on the river reaches.

Yellow On the river reaches. And you realize, of course, that a lot of those existing

Bird: surveys are *way* too old to be used. You realize that, right, Roy? We do.

McAllister: No, I don't.

Yellow Sure.

Bird:

McAllister: I personally don't.

Yellow On the river reaches. Aah!

Bird:

Voices: (Inaudible)

McAllister: We are going to hit on that. We've already got a contract in place to get the information.

Yellow But not in time for the EIS! Big problem!

Bird:

McAllister: Comment on it; that's what (inaudible) comment (inaudible).

Yellow I know.

Bird:

McAllister: That's your prerogative to make comments you would like to make.

I guess I've said about all I can on this slide. What I intended to do was go through on a reservation-by-reservation basis and so the next one is the Fort Berthold Reservation. Reservation-by-reservation basis. In the EIS when we do present data. I need to backup a second and address something that Pemina asked. She also asked is there going to be any other information in the EIS that will more clearly delineates what the impacts are for the tribes. This is a summary table and what it is it's a way to visually allow the tribes to look at all the resource categories we evaluated in one quick picture and say okay where am I positively or negatively affected. Within each one of these resource write-ups there are tables and paragraphs that describe this change for the Fort Berthold Reservation; described this change for the Fort Berthold Reservation; described this change for the Fort Berthold Reservation so there is some detailed write-ups that talk about those changes.

Yellow (Inaudible.)

Bird:

McAllister: It talks about the absolute number that's in there and what the changes that are there. Sometimes it may mention what factor may have caused that change. So there is some detailed information on it. This is the summary table. The impact's summary.

Voice: You've got all those NA's in there though.

McAllister: Well, because you have no navigation that serves your reservation. You have no hydropower; we didn't assign that to any reservation. Back to where you are impacted is addressed in another part of the study; it's not done under the NED. We did look at hydropower impacts to tribal...and we'll show you that after a little bit. Mick will show you that.

There is warmwater fish habitat adjacent to the reservation. Your coldwater fish habitat we didn't...oh, this is on the reservoir now. I'm on the reservoir, that's why it's not there. There's no river adjacent to the Fort Berthold Reservation. Coldwater fish habitat is there but there is no tern and plover habitat and so forth.

Voice: Roy, can I make the suggestion that since you are still in the middle of developing this.

McAllister: We're not finished.

Voice: You're not finished. You are still working on it.

McAllister: We are finished with the exception of filling this line in. I didn't have the numbers last night or I would have filled it in.

Voice: But there's a difference between not applicable (NA) because it doesn't apply like coldwater fish habitat. Its reservoir (inaudible) so it doesn't apply versus indeed it's not available to do an analysis. So if...

McAllister: What would you like to see there then?

Voice: Just having it changed from a not applicable (NA) to data unavailable. You know, make a distinction between it doesn't apply in this reach area that you are investigating versus there wasn't any data to do an analysis like with historic properties on...

McAllister: This means no analysis and all those are no analysis of; there's no analysis of navigation for that reservoir reach; there's no analysis...

Voice: Maybe you should put that down somewhere. Make it clear.

Voice: That NA is "no analysis."

Voice: I think that's a very good point she's making; put that down...

McAllister: I didn't put the table together so I don't know what was in the person's mind why did he put NA and he never did put a footnote and that's the first time...

Voice: That's a good point for the record though. But I would note that in the historic properties. I don't know why, Roy, we are not using (inaudible).

McAllister: There will be numbers here.

Voice: I don't know why we are not using data.

McAllister: I didn't have the numbers with me last night. Yesterday Pemina indicated that there would be... in light of not having or versus an NA in there she would rather see numbers for in the case of the Fort Berthold Reservation, what is the for the Lake Sakakawea portion of these analysis. Then we'll put those numbers in. In other words...

Yellow Aah! The whole river. We need them on all the reservations.

Bird:

McAllister: Well, I just put the total number in and that total number is...

Yellow No, no. Not total number. Here's what we need in writing in order to adequately

Bird: assess the impacts of the various alternatives on our sacred and cultural sites. We need up-to-date information. We need it in time to be able to comment on the EIS. Having no analysis or not applicable or using ancient surveys is not going to be helpful to us.

McAllister: You told me yesterday in front of this group that in lieu of what you decided today that yesterday it wasn't acceptable for us to put information for the Fort Berthold reservation the total change that we would see on Lake Sakakawea numbers would be acceptable. Now today we've talked about a lot of different issues relating to historic properties and...

Yellow Bird: Yes, we are going to need for Fort Berthold; we are going to need it for *all the land* along the river—not just for Fort Berthold. Not even just the reservation land.

McAllister: I need to know from you right now what number you want. The total number. I've got a choice of we've done four lakes and have numbers for four lakes and have the *total* number. Now which of those five numbers do you want me to show for Fort Berthold?

Yellow Bird: None of the above. All of the above.

Bird:

McAllister: Well, it's will be an NA then.

Yellow No, no. All of the above. Roy, you are getting frustrated but let's try ...

Bird:

McAllister: Well, give me a straight answer.

Yellow I'm trying to. And let's be respectful toward one another, okay.

Bird:

McAllister: Yes.

Yellow All right. We here as sovereign nations; we are trying to get all the information

Bird: compiled that we need as sovereign nations to make comment on the Master Manual and the EIS. We need timely up-to-date accurate information related to what those various alternatives do to our sacred and cultural sites. I don't know what your choices are in terms of numbers. I'm just telling you this is what we need, okay?

Voice: Pemina, what do you mean when you say...you need *total* numbers or specific numbers?

McAllister: We evaluated four reservoirs. The historic properties (inaudible) of four reservoirs. We have a limited number of sites we looked on Fort Peck Lake. We went out and did a cultural resources survey there as part of the study on a small portion of the shoreline. We did analysis based on existing data in the database at

the time that we pulled the data off for Lake Sakakawea. We did the same thing for Lake Oahe and then just recently we added Lake Sharpe. Four numbers that to get the total number that is on this chart here, I added the four numbers up and I get it *that*. So I have a total number.

Voice: What does that mean? What is that number mean?

McAllister: That number means that the index value for Fort Peck Lake is some number that is greater than the greatest number of hits that have hit in any one year. In other words, if you count the number of hits and the number of hits that could occur on Fort Peck Lake it's total number of sites that are in the elevation bands and if it's an 8-foot band there and there are 50 sites within that band and all 50 of those sites have hits every month of the year. That means its 50 times 12 hits or a number 600.

Now you go through and look at all the years and if 600 is the highest number, you need to pick another number that is *higher* than that to subtract 600 from so that you will always have a positive number in *every* year. The reason why we wanted to turn into a positive number is we wanted from all these categories up here a positive change reflected by a positive change—a positive change in that number means it good. The benefits, okay? A negative change is bad. So that's why we couldn't put of hits there because the higher the number of hits the worst it is or it's bad. We had to convert to and find a way to convert that number so it would

always be a positive number if the number of hits went down. So we have, let's say, 600 hits. The number we picked was 700. Subtract 600 from 700 and you get 100. You subtract 610 hits from 700 you get 90. So the index went from 100 down to 90 because the number of hits went up which is bad so the index value went down. So we are trying to make things like I say—positive changes in these numbers are good. In other words, this is good, this is good, good, good, bad, good, good, good, bad, bad.

Voice: We're still on that same formula with the numbers of hits (inaudible) on that limited formula.

McAllister: Right. So we did that for each lake. Now I have four lakes with index values.

Voice: What are those lakes?

McAllister: Fort Peck Lake, Lake Sakakawea, Lake Oahe and Lake Sharpe.

Voice: What about Lewis and Clark (inaudible)?

McAllister: Lake levels never changed so either that or we didn't have (inaudible). I don't know why it wasn't. It was not involved in that part at all; that was a change made. Lake Sharpe was made this year by the modelers and I don't know—they didn't tell me what they did; they just did it. And I don't know if Rose knows if

they did it; why they did it? They just did it. They are trying to address some of the issues that surfaced and that was the only change that they were able to implement in time for us to right this Revised Draft EIS. They considered some other changes and used set of data there are other changes or other factors needed to be considered and we'll have to look at that to see if we can incorporate any of those in the before the final EIS.

Voice: So we should change our (inaudible) later.

McAllister: For Fort Berthold Reservation what I heard, what I heard yesterday from Pemina is that because Fort Berthold Reservation is located on Lake Sakakawea that we put the Lake Sakakawea number, in there instead of the NA number. That would be acceptable for the short term.

Voice: Makes more sense to me.

McAllister: Okay.

Yellow Right.

Bird:

McAllister: That's all I wanted to make sure that I understood. That's what I understand and that's what I would have changed last night in the chart in here but I did not have the numbers with me.

Yellow But here's the other thing is that the Three Affiliated Tribes have sites up and
Bird: down the river so we need *all* the available information about the sites. How our
sites are going to be impacted.

McAllister: And that's why, remember I said yesterday we didn't we put NA's in here because
we *didn't* know which of those, let's say, go back to Fort Peck. (Multiple voices.)
We show 50 sites were Three Affiliated Tribes sites which ones were Santee Sioux
sites. I don't know which ones are Crow Creek Sioux site. We don't *know*
because that wasn't part of the database.

Yellow Right.

Bird:

McAllister: And had it been part of the database we would be able to go back and say yeah,
specific sites located all along the river and the Three Affiliated Tribes well since
all these sites are Three Affiliated or associated with Three Affiliated Tribe
whether its Arikara, Hidatsa or Mandan Tribes and so we would have been able to
query the alpha file and identify those 50 sites of that and how often those 50 sites
hit over a period of... we would have been more than happy to do that but it wasn't
part of the database that we were working with.

So instead of printing out information that some might have offended by because
let's say, we show on Lake Sharpe that there may be sites on Lake Sharpe that

were Mandan Tribe sites at one time and associated with Mandan Tribes and though we talked about the Lake Sharpe sites being associated with the Lower Brule and the Crow Creek. Maybe the Three Affiliated Tribes are then sensitive to us doing it that way. So we elected to...we made the wrong decision. We elected to not show numbers at all versus maybe potentially offending a tribe and that's the honest to God reason why we didn't present the numbers. We didn't want to offend any tribe by saying that their sites and Forth Berthold are important to the Lower Brule but they are not important to the Three Affiliated Tribes when in fact they were (inaudible) side-by-side.

Voice: I appreciate your honesty on that, Roy. But I think that (inaudible) agreeing on; you guys have a timeline (inaudible) but on these (inaudible) why a taskforce would be very appropriate to continue to work on other (inaudible). Maybe at the end of the day, whenever it would (inaudible) with your timeframe (inaudible) could say this is a temporary (inaudible) furthering (inaudible) continue this data analysis and that at that point in time we will come to a final (inaudible) data that can be used (inaudible) different tribes (inaudible).

Yellow
Bird: As of right now for purpose of your talking today tribal affiliation is important but what is more important is that we know what the fluctuating impact is going to be on the sites. Period. Tribal affiliation is sort of a side issue here. We need to know how many sites are there that you guys know about and how the various alternatives are going to affect them.

McAllister: All I know is if I ask the person or modeler who put this together who is—the gentleman retired a month ago—and he is so critical to what he knows in his head and stuff but he personally did not want to offend anybody. So he elected to do something that apparently it *does* offend people and he would feel bad. He would feel really bad if he knew he'd done that.

Yellow (Multiple voices.) It's not offensive; it's just not helpful.

Bird:

McAllister: Yeah.

Yellow Because where it says NA we need numbers in there so we know how to consult

Bird: with you guys on that.

McAllister: I sent a note to the contractor last night to put in the, for example, for the Fort Berthold put the Lake Sakakawea number in there and change the narrative in historic properties write-up and to add a tribal write-up to the historic properties section that goes through tribe-by-tribe (inaudible) that most of the tribes are located on those four lakes.

Yellow (Inaudible) don't you think (inaudible) numbers in there (inaudible)?

Bird:

McAllister: Well, they are there. Pemina, they are there but we are helping you to make the

association how we, for example, when we show for historic properties now in the EIS, we are going to show the change in the Fort Peck number or the Lake Sakakawea number for the Fort Berthold reservation. That number is in the EIS already.

Yellow Ah!

Bird:

McAllister: It's in there; it just doesn't say its for the Fort Berthold Reservation or doesn't say it's for the Crow Creek Reservation; it doesn't say it's for and so the Lake Sharpe number is in there; so is the Fort Peck Lake number in there.

Yellow But still we all have sites. Whether they are within our reservation boundaries or

Bird: not. (Inaudible) we all have sites up and down the river and we just need to see those numbers so we can make an assessment. We are going to have to comment on the various alternatives; if one's going to affect them more than the other that's going to make a difference.

McAllister: They'll see it, this page has already tabbed; I tabbed to put a hold on it and that's what I told the contractor last night to go through and (inaudible).

Yellow Who's your contractor?

Bird:

McAllister: And here we show the changes (inaudible) this lake-by-lake.

Yellow Can I have a minute to read this? (Multiple voices)

Bird:

McAllister: You go ahead and take a peak at that. So the changes between the lakes are shown but have I had them put the right alternatives. One thing this is that set of alternatives where we talked about had viable images.

Voice: (Inaudible.)

McAllister: Yeah, right, well I didn't have the numbers with me last night so I don't have a set of numbers with me to change this figure. You'll notice when I go to Lower Brule site, when you look at what you have in your handout in the Tribal Appendix it shows NA's here. Right now it shows zeros, but I changed that last night. I knew there was no change for the Lower Brule Tribes, the sites on Lake Sharpe, so I went ahead and changed that last night. But I didn't know what the numbers were for Lake Sakakawea and I didn't know what the numbers were for Lake Oahe.

Voice: This is very important for us because that impeded us from the (inaudible); to help us to develop a (inaudible). (Inaudible.) We don't have anything in here (inaudible) face in the next 10 years (inaudible) stabilize them.

McAllister: Again, in Chapter 7 we also write a textbook that was called *Mitigation and Monitoring* and we consider historic properties and environmental resources which

we can say that there is need for mitigation and I went ahead and said in that chapter in that section in chapter 7, I said that there are existing programs to do that but they are not (I can't remember the exact words is said).

Voice: Do you have that (inaudible)? Do you have chapter 7?

McAllister: No. It hasn't been...

Voice: That's in the Manual isn't it?

Hargrave: It's going to be in the EIS.

McAllister: Chapter 7 of the EIS. It will be in there it's just that it hasn't been processed yet but I do talk about the need to continue under existing authorities to continue efforts to protect the sites and so forth. That's written right in the Mitigation and Monitoring section of Chapter 7. Section 7.20, I believe.

Yellow Of the EIS?

Bird:

McAllister: Of the EIS.

Voice: Which is on the Web site, right?

McAllister: No, it's not—not yet—it will be. We plan to put it on there.

I wrote this stuff a week and a half ago. (Multiple voices, inaudible.)

Hargrave: Right, the...

Voice: (Inaudible) Who's your MIS Coordinator?

Hargrave: Right, the Summary is out. But in the summary is available, you know, this document is available on the Web site. The EIS document itself will be out hopefully the end of next week.

McAllister. Some of the decisions made in the last month of putting the EIS together threw a monkey wrench into getting the thing done in time. I don't think it would have made much more difference than a week of so on processing the EIS but we had a bunch of different writers on this and had to go back and rewrite sections; change things. We still are in the process of trying to get all PAs referral (inaudible) the document where we've change the names of the awful terms—got three different names for the alternatives in the last month and a half—trying to be sensitive to all different areas and it's all because some one decided not to have a third alternative whether it was me or Rose or whoever made the decision. The decision was made not to have a third alternative.

Voice: Why do you have so much NA on (inaudible)?

McAllister: Well, this on the Lower Brule reservation; it's on Lake Sharpe. The Lake Sharpe levels stay within a foot of itself all the time with no change and so first of all, the reservoir coldwater...there's no coldwater habitat in Lake Sharpe so we didn't model Lake Sharpe for coldwater habitat. It's not a river reach so we didn't model the coldwater and warmwater *river* at that. It's not a river reach so we didn't model the native river fish habitat in river.

Flood control does change levels; you have a recreation facility in there; it's not going to be damaged because the lake levels are not changing. So you shouldn't have any flood damages.

Water supply—their intakes they have are not affected because that lake level stays constant. So if you have an intake in that lake it doesn't have any change in process.

Voice: Do you have this chart; do you have it available for us? Because (inaudible).

McAllister: No, they didn't.

Hargrave: They are trying to append it.

Voice: I need to go back to something you mentioned earlier about this. I understand, now correct me if (inaudible). Historic properties item line there. The hits are within the 8-foot (inaudible). I think the word you used was band. You went up to Fort Peck and took this band area either an area or (inaudible) the lakes and that's where you got your numbers of hits from. Okay, I understood that, is that correct?

McAllister: That is correct.

Voice: Okay, I could follow it there but I also see the big problem of doing it that way and maybe you are aware of this, but as a tribal representative, my job here (inaudible). Where 8-foot band works within an 8-foot area. I would recommend that you go back and increase that band to an elevation simply because we are having sloughing effects. Wherever waves are washing out those cut banks for the shoreline, above the shore is sloughing off.

McAllister: I said the same thing to (inaudible).

Voice: Yeah, what's above the shore is sloughing down and I can tell you from personal experience and we are monitoring three of our sites right now. Your 8-foot band doesn't work on those sites because those sites that have sloughed off into the river at home they are where I live—they're gone! And they are *well* above the 1625 (inaudible) elevation level. They are well above your 8-foot band. But these

sites are gone! What remains of them is half of a (inaudible). (Inaudible) a couple of (inaudible). The other physical material up in there is gone. An 8-foot band for historic properties on the impact is not working. It could be improved on if you could just take into consideration maybe going, instead of going for 16-20 level take your 8-foot band specifically take this 8-foot range and what your hits are. This is what you impact is. Get your mathematician and go up to this elevation point with that erosion taking place on the river line this is how far that the effect goes in X amount of years. Because then you are going to get a more accurate, I believe, a more accurate database that you can make better decisions. Those sites that are gone that are washing in; water never touches them. Cutting them out, right out (inaudible).

In fact, on one of those sites you can't get to it right now because the water level is too high turns it back into an island. So you need to improve on that (inaudible).

McAllister: I just want you to realize that in the database (inaudible) are all sites, all elevations and (inaudible) water (inaudible) impact those sight (inaudible).

Voice: But my point being that within that band even though you are saying this is how you take it and everything to make it work (inaudible). You are not showing the true impact because what's *above* that dam is still being impacted.

McAllister: You are indicating that you look at the end results of these (inaudible). (Inaudible)

and you are right the impact doesn't necessarily come within that 8-foot hit. We didn't go the next step and say here's how many site that have lost. (Inaudible) so we didn't go that just like we did for the birds; we didn't say that we are going to take out (inaudible) nests or were going to increase (inaudible) by 10 or we are going to have 20 more birds since 1920 versus what was there in 1998. So we didn't go that next step to say what would be the sense of what we are trying to measure what effect that has on the ultimate resource occur. But it just isn't an indication that that resource will be more adversely impacted or less adversely impacted by (inaudible) measuring, for example, we'll use birds again. We have less island habitat for those birds we may have lower bird (inaudible). Well we don't go that step of saying how much smaller those bird numbers are. We can only go so far as to say the bird number will be *lower*.

Voice: I understand that part but my point is this, go ahead and keep your band in there but increase the elevation levels to reflect a different number. You just said something and I want to point it back out to you (inaudible). You go back to that first one that you did and everybody looks at these numbers. They are looking at the bottom line; they are looking at these numbers.

(End of tape 6)

Tape # 7

September 13, 2001 P.M., Roy McAllister – Corps of Engineers

September 13, 2001 P.M., Nick Stas - NAPA

Voice: I kept you specific. All he's talking about is that 8-foot band. He's not talking about what's happening up here above it.

McAllister: Talking about all the sites up and down but I'm talking about hits that's within that 8-foot band.

Voice: That's my whole point.

McAllister: (Inaudible.)

Voice: That 8-foot band isn't just impacting what's inside that 8-foot. It's impacting what's 100 foot up.

Voices: Exactly. (Multiple voices, inaudible.)

Voice: That's something that needs to be addressed.

Voice: At least point it out.

McAllister: I don't think anywhere we've indicated whether a site would be lost.

Voice: I'm not saying that 100 sites in 8 years you are going to lose 90. I'm not saying. Give everybody the same...

Voice: I don't know what verbiage you used (inaudible) consideration.

Voice: Give everybody the same consideration when they look at these numbers and they can take an idea of what you are trying to say. (Inaudible.)

Voice: I can't tell you because I don't have a basis for where they got (inaudible). Where they get the (inaudible) value. What is the value (inaudible) rationalize it? Are they putting a value on spiritual (inaudible) monetary value; what is it I don't know. To make these things clear you need to be more specific, I think. If I could add something or (inaudible) or do that I will, I don't know.

I wanted to point that out about the historic properties. An 8-foot band, I understand where you are coming to that but I'm going to keep you guys focused in on that 8-foot band. At least I know that when we mention that you tell me you taken in factored in at a higher elevation (inaudible) that impact (inaudible). I'll keep you honest. (Inaudible) No, you only talking about the 8-foot band. So don't sit here or stand here in any meeting in front of the tribes and say we are working on this, we are doing this and this and this. You are only doing it to a specific area.

What I'm saying is get it up back where it belongs. Needs to come up higher.

(Inaudible) you've been saying that on the Platte River for many, many years.

(Inaudible) water doesn't impact (inaudible).

Hargrave: Roy, is this a good point for break! (Chuckles) I think it is.

Voice: The last time I talked I said no break and you wouldn't do it! (Laughter.)

Hargrave: Let's take like a 10-15 minute break.

Hargrave: The Draft EIS and the final one.

Yellow Right.

Bird:

Hargrave: Just so there was no expectation. I think what we are going to do is if we could we are going to go ahead and have Nick start with Western Area Power's presentation and then I noted Tex's is out of the room but then I think Tex would like to make some remarks and we also have a tribal elder here who would like to make some remarks. So we'll do Nick and then go ahead and have those comments by Chairman Hall and the Elder and then wrap-up with Becky.

Voice: Are we going to have like questions/answer period on maybe some other things on

this?

Hargrave: Oh, absolutely. We will go for as long as you want to go here. I think we need to come away from this meeting with a clear expectation of where we head on the Tribal consultation.

Voice: I know my tribe has a question that is not addressed here.

Hargrave: Okay. Absolutely. We'll at the end of things we'll have total open discussion and then we do have to talk about where we go from here. Go ahead Nick.

Stas: Good afternoon, my name is Nick Stas. Some of you I have met before (inaudible) meet some of you and for those who don't know me I'll tell you a little bit about myself. I've been working for Western Area Power since 1991; I have been Western's representative to the Missouri River Basin State and Tribes Association and for Wild and Missouri Natural Resources Committee. Prior to that I worked for Bonneville Power from the mid-70s up until 1991.

I'm going to cover briefly a little bit of background. This analysis is focused on the rate impacts and specifically we are going to point to potential rate impacts to the tribes based on their recent allocations.

Western's mission—one thing to understand and I think it's really important to lay

the foundation—Western's mission is based on legislation. Just like other Federal agencies it's a member of the Executive Branch. We comply with all our directives from the Pick-Sloan Legislation originally as amended by the Energy Policy Act of '92. And I think this is important because as I will explain later under the Pick-Sloan Legislation we could only allocate two other—two utilities. In other words, we are wholesale power of seller and we couldn't sell retail. Under the Energy Policy Act an exemption was made for the tribal entities so that we could deliver through contract mechanisms the benefits of Pick-Sloan power. I think that's important.

We market and deliver—this is a very important cost-based hydroelectric power and related services. Cost-based really means what it costs to deliver that power; pay back the Treasury for the projects. The O&M for the Corps and the Bureau of Reclamation and the Aid to (inaudible) we are required by law.

We are one of several Federal electric utilities. Bonneville Power in the northwest has separate legislation; it markets power from the Columbia and Snake River Dams. Western Area Power covers 16 states and specifically the Missouri River power along with Big Horn River is the Pick-Sloan Division and this is the marketing territory here.

Now Southwestern Power Administration, there's a little bit of overlap with Western in Kansas and Tennessee Valley Authority and the Southeastern Power

Administration. There is no power marketing administration up in this part of the country.

We transmit power long-distance over high voltage lines to firm power customers. We were created in 1977 under the Department of Energy Organization Act. Prior to that people that carry out Pick-Sloan from the '40s up until '77 was the Bureau of Reclamation up here.

We have four regional offices and a corporate services office in Lakewood, Colorado. We have no distribution that's retail selling or generation responsibilities. That needs to be amended a little bit. We do have some requirements for some renewable development on a very small scale but essentially we market the power from the Corps and the Bureau of Reclamation. We have 17,000 miles of transmission line that's 150,000 volts and above.

Our regional offices. The regional office for the Eastern Division of Pick-Sloan is in Billings, Montana; we market the power from the six Mainstem Missouri Dams as well as Canyon Ferry Dam; upper Missouri Dam; the Yellowtail Dam on the Big Horn that drains into this basin.

Okay, how does it work between Western, the Corps and its customers? Western has eastern and the western dispatch center. We request the power to meet our firm power loads from the Corps on a daily basis—our dispatchers. This is where

it gets a little complicated, we don't know that the power is going to come from which particular dam at any specific point in time but over time I do have annual reports of, for example, last year what we sold from each dam in the Eastern Division of Pick-Sloan last year our power revenues were around \$260 million. So...

We make no money or profits. This was \$260 million as I said earlier gets collected to 1) pay back the Treasury for the construction of the dams; pay the operation and maintenance of the transmission line and the Corps dams and the Bureau's dams and provide some additional aid to irrigation and some other responsibilities that are provided for and (inaudible) to us. We have to pay for. After that it breaks even on what money is taken in.

The rates... we haven't had a rate increase in 9 years; our power a little 14-mil or 1.4 some cents of power are some of the lowest in the nation. Of wholesaling to our firm power customers which we'll get into.

By the way, I want to introduce one of my colleagues who works in our power marketing division and stationed here in Bismarck, Mr. Jim Bach, sitting right here. He'll correct me if I am wrong on any of this. (Laughter)

Okay, the Upper Great Plains Region. Pick-Sloan Eastern Division, as I said, we have about 2801-megawatts of generation capacity. That's kind of the main plate

capacity on the dams. Now we can't market all that because we know we don't get that maximum output every year. We market to a normal water year as determined by the Corps and the Bureau of Reclamation so we market roughly 2109 of those megawatts.

Hall: What happens to the difference of that? (Inaudible.)

Stas: Well, on a good year, let's say we have more than that, we sell that on the open market and for last year I have the figures that I can provide to you, Chairman Hall, if we are in a drought situation, however, and we don't market; we don't get that much generation which is the type of year we are in now. We have to buy purchase power; we have to buy thermal either coal power to make up power to our firm power customers. So there's a...it evens out.

Hall: So when you say...

Stas: In other words, if we are below the normal year we are buying power and on a very good year, we are selling power. You want to add anything to that, Jim.

Bach: Reservoir can complete fill up (inaudible); all the reservoirs at one time I think that's where the 2800-megawatts maybe come from. (Noise.) Average water year where the levels are at maybe a little bit higher than they are now. That's what we look at. In the long range we market 2100-megawatts of power.

Yellow So if you have a really good year and you have a surplus that you are selling; do
Bird: you save that (inaudible) to buy it?

Stas: If the purchase power. Sometimes it goes to pay back additional money to the
Treasury if that's what we are told to do and then we have to go in debt to buy the
purchase power. And Congress authorizes purchase power and wheeling budget
every year. So it tries; hopefully, it works out but over the long term it does work
out. We do come in even with bad years and good years and that's how this
number was selected.

Hall: Is this difference here, is this why the equitable compensation to tribes (inaudible),
Standing Rock, Cheyenne River, Lower Brule and Crow Creek is this where that
revenue came from? Or did that revenue come from (inaudible).

Stas: I'm not sure about what you are asking me. You are talking about...

Hall: We got a settlement because of the dams created the energy (inaudible).

Stas: Part of that money was money WAPA paid back... (Multiple voices.)

Hall: (Inaudible.)

Stas: Part of it yeah. That goes to Treasury and goes to settle that and the same way with the Pierre, Fort Pierre buyouts for the flooding. It's only...

Hall: 728.01 right. That's what you carry, right?

Stas: No! The normal year is this; this is the maximum generation capacity—best possible year. This is what's marketed on a normal year—2109-megawatts. And for last year we had a pretty good year—better than average year—on our (inaudible) power cells. I gave you that annual report from last year, Chairman Hall, it shows and now this year it looks like it's worse than normal because of bad water conditions particularly in For Peck. And so there is a little more purchase power happening. Do you want to add anything to that, Jim?

Bach: I think the system has worked at not a 100% of the time (inaudible) 2800-megawatts. Probably 60% of the time we do. It brings down the average of 2100-megawatts.

Voice: I'd like to make one comment to Mr. Hall here. Cheyenne River did not (inaudible).

Hall: Yours was different, huh?

Voice: Yeah, we tried but we didn't (inaudible).

Hall: Still under U.S. Treasury.

Voice: Yeah, I think ours at Standing Rock (inaudible) on...

Voice: I think Crow Creek (inaudible). (Multiple voices.)

Stas: In the, this is the Upper Great Plains Region, we maintain 7,745 miles of high-voltage lines and we employ a craftsman, electricians and linemen to do that maintenance that's... we have 98 high-voltage substations and roughly 200 other types of facilities: microwave stations, communication stations and we operate two control areas and Pick-Sloan one eastern interconnection and one western interconnection. That's our dispatch.

Hall: Does any tribes have any crops with preference on the transmission lines?

Stas: What we are operating on right now and this is fairly new, we are required to operate in accordance with FERC (Federal Energy Regulatory Commission) or as 888 and 889 on that process on open access and then with charges for our wheeling. This is relatively new; we are members of the Mid-Continent Area Power Pool presently with all the other utilities in the Midwest and in Canada and we are required to operate under those Federal Energy Regulatory Commission guidelines on who we let onto our lines. It's fairly complicated and in depth. I

can get you a lot of information on that but you want to add anything on that, Jim?

Bach: There is no preference to any firm customers that (inaudible).

Hall: Nobody in the northwest (inaudible)? (Inaudible.)

Stas: Well, if somebody had something to market, what we'd have to follow is the process that FERC lays out for us on this transmission access requirements. As I said it's relatively new and still being worked out.

Hall: I see that but just (inaudible) come from? (Inaudible) but obviously you must have (inaudible).

Stas: If you get contracts whoever wants to do it—market the power and *use* transmission lines—first of all there has to be availability or upgrade built to make sure the system can handle it without causing problems for the system and then there's a contract that's put into place for wheeling or whoever wants to build energy for market and whatever type of energy that may be. Now we are only part of the back grid; there are a lot of other folks that are industrial utilities they are all part of the regional grid. That gets even a little bit more complicated. You've have lots of contracts and dealing with all the other utilities in the region.

Hall: Well, my last question (inaudible). In your policy (inaudible) tribes preference

(inaudible)?

Stas: Tribes have preference for allocation; just like our other preference customers, as I said, you are an even little more than preference because tribes are the only people that we can provide allocation to that are not a utility. In other words, that sell to retail customers. That was provided for just fairly recently in the allocation post-2000 was made was 4% of our total load. And that was a start and, as I said, that was a process we had at Environmental Impact Statement as lot of comments; it was called our Energy Planning and Management EIS.

Hall: Even though we got 4% instead of 7, if I heard you right, we still don't have priority or access to that transmission.

Voices: (Multiple voices.)

Stas: Nobody has, right and that's... generation.

Hall: So we could create a generating plant (inaudible) preference (inaudible). Is that what I'm hearing?

Bach: If we have capacity available. First come first serve so (inaudible).

Hall: Do you have capacity?

Stas: Depends on where. See...

McAllister: You have to have a proposal; we have a part of our organization called System Studies that looks at every proposal of how many megawatts, where they want to put it and how is it going to affect the system. Then some cases there is a negotiated agreement to pay for partial upgrade. If we have enough right-of-way; whether we've got to buy new right-of-way.

Hall: (Inaudible.)

McAllister: Occasionally they do. (Multiple voices.)

Hall: Okay, fine. (Multiple voices.)

Bach: In the state of North Dakota there's hardly any available (inaudible). They would, one of those coal companies or the power companies build another generation plant, they'd have to build on their own. (Inaudible.)

Hall: Well, we are talking about (inaudible).

Bach: Well, another plant is going to have take some (inaudible). We don't have any available.

Hall: There's no thought to do that to develop another (inaudible) plant?

Stas: There is a proposal, there's a proposal that's being looked at right now for upgrading a line and even building possibly a new line for Belleville (inaudible) for example. Just because of system, trying to keep the system stable. But there are a lot of proposals and a lot people asking what it would cost to do different things in various places. It's really a lot of activity in the energy arena right now.

Hall: So how does this affect the 4% set aside for the tribes?

Stas: That doesn't affect it from the standpoint that that 4% is going to be whatever the normal marketing year comes out of after the Corps record decision on this EIS. It's going to be 4% of whatever we can of our marketable load. Now, there's going to be some changes coming up. I think we can go to the next slide. In 2004 there's going to be another allocation.

Bach: 2006.

Stas: Or 2006 and that's going to be another what—2%?

Bach: Will be 1%.

Stas: 1%.

Bach: 20-megawatts more available (inaudible).

Hall: Does that follow the same formula that was...?

Bach: Yeah, all our existing firm power (inaudible) 1% of their allocation (inaudible).
Resource pool. (Inaudible.)

Stas: Now, we allocate to preference customers. That's important definition. Our preference customers are: REAs, coops, all the public utilities and municipalities and tribes are also preference customer for power allocation. We determine power rates based upon what it costs to deliver that power, pay back money to Treasury, pay the operations and maintenance costs and our aid to irrigation that we are required to provide by law.

Hall: On this 4% set aside for the tribes. What formula do you use to distribute fair share of this 4% because (inaudible).

Stas: Okay, we'll refer to Jim because that's individually done and has been a long process to get a bunch of contracts signed mostly through the local coops or whoever is providing delivery. Do you want to talk about that, Jim, at all?

Bach: Well, there was 4% withdrawn back from our existing firm power customers. Of that 4% then about 3% of that went to the Native American Tribes. These tribes of that allocation how much would be about 60% of the tribal total loads. So each reservation went out and surveyed how many personnel are actually on the reservation; developed maximum amount of megawatts (inaudible), kilowatts and kilowatt hours actually using. Had that resource pool (inaudible) 60 megawatts of power instead of 4% or 3% of total allocation. So all the tribes receive about 60% of the power indirectly and directly from Western.

Stas: Of their load?

Bach: Their total required load.

Stas: Yeah, 60% of their total load.

Hall: So it is based on the average house with a roof?

Bach: Right.

Voice: (Inaudible) will this... will anything but the EIS affect the rates?

Stas: We'll get a few slides later and get into that. Real quick here, we'll keep moving along. Okay, keep going.

Okay, I just went through this and municipalities, REAs, other federal and state agencies—they are also preference customers. Public utility districts are; irrigation districts and Native Americans. That waiting until the back one.

(Laughter.)

These are Western. These little guys do not have an explanation; these are all of our 260 firm power customers. And let me distinguish a little bit. Firm power customers—we have an obligation to serve on their load where we have to go out and buy purchase power and each one of these is numbered in our annual report. We have surplus customers, when we have the excess that I talked about, that's above the normal water year. We sell to and that's at the going rate; that's not at the firm power rate; that's whatever the market is.

Yellow These are all the places where you send (inaudible)?

Bird:

Stas: These are the 260 firm power customers in the Upper Great Plains Region of Western Area Power.

Okay, go ahead.

Okay, marketing plans—we've had a number of marketing plan that we operate under from '59, '64, '77, post-aid and fire and the next slide the new one post-

2000 to the present. Okay. We already covered this that the tribal customers equals 60% of their estimated 2000 load—is the way the allocation was made.

The Master Manual—customer service groupings. What our power customers requested of us to understand better how they are impacted by Master Manual, we broke it down to what percentage of their power is served by Western. We have categories of 10%, 40%, 70% and 100% in the EIS. Now 60% was added in here because that's the tribal load is 60% of their total loads. So it's added in here but it's not in the EIS.

McAllister: It comes out. There's...

Stas: It comes out that way.

McAllister: The tribal (inaudible) is in there.

Stas: Okay. Roy tells me it is. But at least in a summary that I looked at it wasn't in the summary.

Now the hydropower alternatives are compared or 100-year average to the current Water Control Plan (CWCP). Assumed power is sold and purchased at synergy rates as of January 30, 2001. All that synergy rate means is what's the going futures market rate based on the spot market crisis. If you would go out and buy

that much power, that's what that tells us and that changes fairly routinely. Price of power has spiked up in the Midwest as it has in California so that's where we are up-to-date on using for analysis that I'm going to talk about here.

There was a rates group are actually Darwin Helm and Bob Real did a rate impact from either revenue increase or decrease based on the alternatives that were presented by the Corps. We studied the impacts on our various customer service groups.

Now, this is in your handout. Each of these put a GP instead of in an MR and will match up with the Summary EIS. The current Water Control Plan is self-explanatory. These are dollar impacts to Pick-Sloan firm marketing 100-year average and you can see the alternatives vary in millions of dollars of impact to revenues up to about \$40 million for some of the alternatives to...

(End of Side 1 of Tape 7)

Stas: About in the Summary there's a paragraph there.

McAllister: Nick, is that actually dollars generated there?

Stas: Yes, it is.

McAllister: Okay.

Stas: Average annual penalty compared to the current Water Control Plan and it's on an annual basis here.

McAllister: And, Nick, that does not include the firm, that's just that which is an excess or a shortfall from the firm power.

Stas: Right so these are revenue impacts in this chart. If we go ahead here we might become a little bit clearer.

Hall: August, that's what \$40 million? Is that what...?

McAllister: Yes.

Hall: That's what we generate?

McAllister: No. Water control plan.

Hall: Say it again, Roy.

McAllister: With the current Water Control Plan and the MCP alternative, which is Corps 00 on here, it's supposed to be MCP that we changed names as we moved through the

EIS process.

Hall: White purple is for current and (inaudible).

Stas: That is the kind of the purplish of light blue and the darker blue is the conservation.

McAllister: MCP. Modified Conservation Plan.

Stas: MCP.

Yellow Can we have a color version of this in the Executive Summary or will we?

Bird:

McAllister: No.

Yellow Those are the alternatives up there?

Bird:

McAllister: These are alternatives that are reflected in the Summary right now.

Voice: This will be in the EIS though?

McAllister: Right.

Yellow A color version?

Bird

McAllister: No. Black and white.

Yellow Okay, you're going to a different graph then, right? So we can tell a difference

Bird: between the alternatives?

McAllister: Somewhat—go ahead and move ahead there, it's a little bit more clear version here with. This is increase in purchase power costs broken down to our types of customers based on percentage of loads they get from WAPA. Some very big utilities, for example, Omaha Public Power may get 10% or less of their load; their impacts to their rates is very insignificant. Of 100% the impacts are above 20% for at least these two alternatives, the MR2021 and the MR1521.

Hall: What does those MRs mean?

McAllister: Those are GPs in the Summary. They are the GP with the same numbers.

Hargrave: This is basically the chart that you see on page 17 of the Summary, right. It's in different colors.

Hall: That'll tell us where that (inaudible)?

McAllister: Right. Right and except the tribal load is right here at the end with a 60%; if a 60% load; the two biggest impacts on their rates would be the 1521 and the 2021.

Stas: Those with the lowest summer flow will have the biggest rate impacts for the tribes.

Hall: (Inaudible)

Stas: Well the least impact would be the 1528, right. For, that's just looking at one factor now. All that's looking at is your rate impact based on these various alternatives. There are other things to weigh as Roy said. There are other factors that may be of more importance or not to you. I don't know but just from the hydro standpoint—that's it right there.

Okay, go ahead next.

Hall: Touch on that a little bit more (inaudible); we're just looking at the hydro and...

Stas: If you only considered, if you were going to make the decision on what you supported only based on what your hydropower costs would be based on your current allocation this analysis is showing the 1528 would be the best because was the only criteria you were looking besides your (inaudible) impact.

McAllister: A better way to state that is that if you are one of the tribes that does get the hydropower.

Stas: They all do.

McAllister: Then you're electric bill would go up by about 8-9% if you had an alternative had a 21-kcfs summer flows is what that chart means. Your rate...

Stas: For this yellow one right here. Is what Roy is saying right now?

McAllister: Now if you one that had minimum service or the 28 navigation service release from Gavins 28.5-kcfs, which is represented by the 28 as the last two digits; your rates will go up by about 2-3%.

Stas: A little less than 2%.

McAllister: Your electricity costs would go up by that much. If you would go with MCP or stay with the current Water Control Plan, they will change to zero.

Stas: Zero.

Hargrave: And just tell me if I'm being too simplistic here but the reason why the summer flows create that affect is you are holding the water back behind the dams; you are

not running it through the dams.

McAllister: Right here, Rose.

Stas: The real reason it's revenue impacting is because that's when it's most expensive to buy power and when you make the most money is you're selling it. That's really as simple as to put it because what happens, if you look at the market, the prices always go up in the middle of summer and in the middle of winter. Or the two peak flows. Do you want to add anything on that, Jim?

Okay, but I think that's a great question and that was if you were only going to base your decision on rates for hydropower. But like Roy has been saying for two days, there's water supply, cultural impacts, fish and wildlife things and that's when it gets difficult to figure out what's the best if you weigh 10 or 15 of these issues together. But Nick is just talking about one of them.

Hargrave: Right.

Hall: I was trying to follow that to see what the best (inaudible) would be for the tribes and whether the factors in each of those different questions...trying to consider...

McAllister: This was pretty straightforward and there could even be even a little more detailed analysis based on individual contracts which are all different. I don't want to

make more work for my colleague here, Mr. Jim Bach, but it is so very complicated because the charts have what 25-26 contracts different?

Bach: This right here is just that 60% (inaudible) you are getting some indirectly from the cooperative. So the rate increase of maybe 8% here really wouldn't be (inaudible) increase would be residential contracting. Probably be 2% or something.

Stas: Depending on how the contract is set up with the cooperative, right?

Bach: If you just look at wholesale power cost and do all that retail distribution process.

McAllister: This is that everything all lumped together, this is the wholesale cost only. It doesn't include the distribution from the cooperative. See these guys aren't utilities. This is delivered to the utilities. That's why we had the (inaudible) up there on the distribution.

Hall: So even though (inaudible). Even though we are on the right side of the bar chart, that's wholesale cost or whoever we partner with as an electrical coop. Their rates could increase.

McAllister: Right.

Hall: Would they be at that 100% load?

McAllister: Well, they could be. (Multiple voices.) Or they could be, it depends on where they are at here; if they are getting 70% of their load from WAPA, you have to look each individually then their rates go up—they also jump up, see. Depending on how much they get from WAPA.

Stas: This is the wholesale power cost right here.

Hall: Where are the coops in our area are they close Nebraska, Montana?

Stas: They are around (inaudible).

Hall: Oh, they're not...

Yellow (Inaudible.)

Bird:

Bach: The city of (inaudible), South Dakota. (Inaudible.)

Voice: Very, very few customers control these plans.

Hargrave: Do we have an idea because we are already being asked this question, when you

look at total number of customers, how many fall into each group?

McAllister: We have had that printed out; there was an email on that.

Stas: You just researched that for somebody.

McAllister: 100%...37% of Western's customers; 37% of those 260 customers that were on that one map. 100% of their power.

Stas: 30% of their customers are the coops or the utilities.

McAllister: On that map and those dots that are on that map.

Stas: Of those 260 dots, right?

McAllister: 37% of those get 100% of their power or (inaudible) hydropower. 30% of the customers of those dots get 70% of the power from Western; 26% or one fourth of those customers get 40% of their power and only 7% of those dots, now again, 7% they may be like the big utility like Omaha Public Power District that serves Omaha and eastern...

Yellow Those are (inaudible).

Bird:

McAllister: Right. Now it's not a sliver that they are buying; this is a percentage of their total load. Some of those guys are our biggest customers but it's only a small percent of their total load. So if you really want to dig into it, I have last year's annual report in this area of Pick-Sloan and they sent out each of the 260 customers and tells you last year how much power they bought.

One thing else that the email said and this was Darla. Darla would have been here today if it hadn't been for the plane being called down on the ground. She also said that the median customer and those are the 260 customer, the one that fits in the middle gets 60% of its power from hydropower. So tribes... median, yeah, you'd be kind of like a median customer there.

Hall: So we can still expect a rate increase then?

Stas: Well, rate increase depending on which alternative is selected both based on your allocation and whoever else you are contracting with for your delivery for your distribution. So it could be a double. Could be a double (inaudible).

Hall: How come (inaudible).

Yellow 100%

Bird:

Hall: Government's word. (Laughter)

McAllister: Well. Let me explain that again. I wanted to cover that, Chairman Hall. But what happened was there was a Catch 22 written into the Pick-Sloan Legislation. There really was mention about allocation to tribes but there was a Catch 22 that Western could only sell wholesale power to utilities. Up until the Energy Policy Act in '92, if you didn't have a utility we couldn't sell or allocate you power based on legislation. We are all good federal employees; one thing Congress does is pass a law; we've got to comply but sometimes the laws conflict when it's Endangered Species Act or navigation flood control. We've got federal employees trying to reconcile that sometimes but in the case of the allocations of the tribes it was a legislative deal we couldn't make the allocation until that exemption was given in the '92 legislation.

Hall: I thought it was twice we were supposed get free electricity.

McAllister: There is going to be...

Hall: Said in 1949 and said in 1992 or 1996 (inaudible) Joint Tribal Advisory Commission which led (inaudible) in 1992 Equitable Compensation Act against the government said because of the devastation (inaudible) given free electricity.

McAllister: I'm not aware of that.

Hall: It's in the Congressional Record.

McAllister: Okay. Anyway the legislation, up until the Energy Policy Act, we couldn't even make an allocation and then we did the EIS and this wasn't a non-controversial thing because we allocate all our power and if an allocation is made to the tribes, of course, it's coming from these other customers. So it's a start and maybe it's not adequate from your perspective but I think we are moving at least in the right direction as far as trying to get the benefits of that hydropower.

Now there is going to be again this post-2006 another opportunity to get some more but it's going to be incremental over time because if we impact... it's not going to be politically feasible to take a *whole* lot more from our customers who we've been serving in 40-50 years. To do it over time maybe and it will be much more amenable for planning purposes of supplemental power and other issues.

Hall: Well the tribes should have been in there 40-50 years ago.

Yellow They've been taking from us for 40-50 years, Nick.

Bird:

McAllister: Hey, I'm not disagreeing; I mean a volunteer I would have kind of.

Hall: For the total record, I would just like to know if that we do appreciate the 4% but

by the time 2006 does roll around we should have at least (multiple voices) 8%.

McAllister: Well, I guess that there will be another process is all I can say.

Hall: Based on the Government's promises to the Indian tribes. I just wanted to say that.

McAllister: I know we're good federal employees, we carry out whatever they tell us to do, Chairman Hall.

Hall: Just wanted to get on the record (inaudible). (Laughter.) (Multiple voices)

Stas: I understand, I understand. All right, the Summary—this is the bottom line. Increased costs a greater burden who knows what greater percentage of power from the federal resources. Because we have a zero sum gain, we don't have any process; we don't have any stockholders; our rates are completely determined by what it costs us to deliver the power, pay (inaudible) and our other legal obligations. Our rates are based on that. If we have less power to sell or if it costs us more than our purchase power that goes into our rates. That's the bottom line.

Voice: What if the tribes would approach you and you buy power from them versus let's say wind generation for one (inaudible).

Stas: We buy purchase power? Is that what you are saying if we are short on power and you have some power to sell us, we'd pay you the going market rate like we do anybody else. In other words, what ever the market is we pay that rate. Now, there might be some special deals, I think and I may be speaking out of turn here but there has been some in the President's Energy Plan some calls for trying to stimulate some things and renewals and such, there might be some pilot type deals or special deals. Jim, you want to talk about that?

But there's some possibility is what I'm saying but right now if you've got power to sell and we need power, we are going to pay the market rate and from whoever get moved to serve our firm power customers; we've got an obligation to keep their lights on. Really take that very seriously. A reliability of our system; the safety of our system and deliver the power that we've got contracted to delivery to everybody.

Any other questions? Chairman Hall, another question?

Hall: Well, I was just thinking—what was the answer on that on his question?

Stas: If there is power to sell...

Hall: (Inaudible.)

Stas: Okay, if there's power to sell, what I told the gentleman, I'm sorry I don't know your name. We'll pay the going market rate on when we need the power, if we buy power from any institute. Now, right now with most of our supplemental power there's some contracts been laid out with the Basin Cooperative and others and all that system's studies work and power marketing work is done in a separate group and in our organization. But there is some potential as (inaudible) growth increases that there may be additional need or if we have a severe drought that's another condition where we are buying lots of purchase power.

Hall: There will be probably an opportunity for us collect those tribes that are looking be a part of the energy solution to provide some power but obviously we want to have access to the transmission lines, too.

Stas: Sure, I understand.

Hall: And I'm hoping that current Bush administration is looking at... (inaudible).

Stas: Well, there is an energy policy and the Western Governors came out and, I'm not sure if you've seen that report, on a proposal to reinforce the grid for all the Western Governors signed it and there are some proposals on building new transmission lines. That's been out less than a month. That came out the very end of August.

Hall: I have another question. (Inaudible) first look at an analysis of all of this and how EIS the impact.

Stas: Only the hydropower portion.

Hall: With the various alternatives. What I was going to ask your recommendation for us tribes (inaudible) based on who know the tribes agreements today I'd be very much interested in cultural and historic preservation and all the wildlife protection and all that (inaudible) issues that we (inaudible)?

Stas: Well, let me give you something that's a little bit of a perspective from what I know about the policy and where we are. On the issue of native fishes, things of that nature our customers have been supporting research on the pallid sturgeon and reintroduction of the pallid sturgeon. We funded... we are members of Upper Missouri Task Group that prioritize and fund every year the most important projects for the pallid sturgeon. We figure we are benefiting from the river; we owe something back to the river. Our customers that we met with over time have supported our efforts to the degree we are doing this annually. So we feel that we've got some obligation to these species that have been there but we still want... we have that fiduciary responsibility to keep the rate as low as possible to our customers. As some of you may know the farm prices haven't been all that great. The REAs and coops need to keep their power down to keep the ag folks in business. So we are balancing that and you are asking for recommendations. I

know very little about the cultural resources except we have a memorandum agreement to work with Pemina Yellow Bird on (inaudible) Hills microwave sites there were some... we come up with an agreement to turn back that land once we are done. We'd been using that for a communication site and things of that nature but we are trying to do the best we can and still keep the cost of our power as low as possible. I don't know if that is a sufficient answer to your question. I'd like to recommend...

Hall: At some point in time all of us as people, tribal people, Federal people, private people and State people realize that the river is an endangered species clearly, I think, all the research shows the Missouri clearly is and there must be a balancing act for that somehow. This thing about we'll work on the (inaudible) we cannot afford to go either or—there must be a balancing act amongst all of us in this. That's why I think it's very important that WAPA as well take that into consideration (inaudible). Because these are the questions you've (inaudible).

Stas: I understand. I guess one important point on... we make requests and the Corps they are very good colleagues as far as trying to generate the power we need so that we don't get into the situation they got in California where the lights are going out and peoples lives are threatened or various things. But on the other hand they'll tell us if they get a flood downstream, you can't have any power. You go buy purchase power. See there are other issues there and it's happened in '93 where we generated very little, we were buying almost all purchase power. So the

decision on turning the valve on the river is, well, it's two entities, the Corps of Engineers and the Bureau of Reclamation basically but the Mainstem dams is the Corps of Engineers—the six Mainstem dams. So from that standpoint, yes, I think they considered us very well but there's other things that sometimes kick up your priorities and flood control is one of those issues when people are being flooded in '93. So I don't what... maybe Roy could answer that question better than I on how that works.

Hall: I was just merely suggesting that—it's a balancing philosophy I think that (inaudible) line up on either side of the issue that's not going to help anybody. It's trying to encourage the Federal agencies to bear that in mind. That you are going to be (inaudible).

McAllister: That's the way we view it, I think with everybody would align whether they would *like* to be, if you would have everybody in a circle, a square on both ends of a long line like you would be (inaudible) on a rope. The real answer if everybody is going to be happy somewhere in between. Can't be out there on that outer edge it's got to be somewhere in between. That's (inaudible) compromise.

Hall: And, Roy, I would add to another thought is that I think there's many private (inaudible) Federal (inaudible) State cooperatives don't realize there is a third sovereignty in this country and you've got to live with it. And the only (inaudible) world that has three sovereigns: Federal System, State System and Tribal

System—all three are the three sovereign tribal entities. Any times tribal entities is forgotten or we are classified as a group or another partner, we are not a group. According to the constitution we are a third sovereign; it's a legal (inaudible) responsibility. I merely say that just to comment (inaudible) but there were many of our customers that we provide power to that do not realize it. Don't like it when we cut 4% but it's too bad.

Stas: And we know that better than anybody. In fact I just want to also add on to that that I personally feel that we are making progress. And it may even not been enough that everybody thinks what's deserved but I think also the folks at the Corps and I've been working on this since 1991 and there's been lots of progress going on and I guess the better dialogs... And there's another point, I want to make one other point. There are some people that are on the West Coast and East Coast that are very envious of our power rates. In the 1980s the Reagan administration proposed either selling the power marketing administrations are charging the maximum market rate because there are people paying 13 cents, 15 cents a kilowatt hour up in that New England portion that was all white portion of the map I had and so there's pressure in Congress that actually passed the House but was defeated in the Senate to do away with the lower cost power for our part of the country. So I think that all of us can work together to keep the low cost power as a benefit of the hydro system and not get the squeeze with the excessive high power rates.

Now we are only a small part of that. There are lots of other utilities that serve customers but our rates have been very, very low and they are still very low; we are going to try to keep them as low as we can. There are a lot of pressures...

Hall: And that's a bipartisan issue.

Stas: Yes.

Hall: For us in this part of the country. We can all partner and support that.

Voice: What about when you talk about wind generation? Tribes going to be given preference on this are you mentioned the Western Governors signing on to increase...

Stas: The Western Governors proposed is some enhancements to the grid and that's the whole point of their report. And I think the basis of that was potential development and they didn't identify who is going to develop the energy but, in other words, getting the grid up to speed so that new energy sources, including renewables can be brought on line and if the tribes are a part in that, I'm sure that their input should be made as far as getting the grid to wherever they want a site—their power development activities. Whether it be wind, wind is probably very important resource in this part of the country.

Voice: We are ready to go with ours but we are just trying to look for ways to get onto the grid right now with our wind generation (inaudible).

Voice: That's the problem (inaudible).

Stas: What I was waiting to do, there are people in our organization in Billings headed up by Mr. Ed Webber that does all the system studies for proposals to bring energy onto the grid and they'll be glad to work with whoever is coming up with proposals to do that and I think we do have a special relationship with the tribes that we developed over sometime with the power allocation. So I'd sure like to see you benefit from the development of power.

Yes?

Yellow I have a couple of questions for you. The (inaudible) that you had sign with us is
Bird: with *all* the North Dakota sites.

Stas: Okay, all the North Dakota.

Yellow All the North Dakota sites. And I have to say for comparison or whatever, that
Bird: was a very pleasant negotiation and we carried out cooperatively; you've been very helpful and wanted to work with us as opposed say other people in the Corps. The association that we did with you took a couple of months; they took three

years.

Stas: We did the best we could.

Yellow I've got to ask you in your annual report. Where's do tribes appear? I'm looking

Bird: at the customer mix.

Stas: That's based on the 2000 power served to utilities and go ahead, Jim, you can explain that.

Bach: The (inaudible) a power allocation as of January 2001.

Yellow So we are not in here. Okay, great. Thank you.

Bird:

Voice: Is this something we are going to get annually?

Stas: Yes.

Voice: Who gets?

Stas: You will get it, now I've got to check on that. It goes to all of our customers; so I assume that they will get that. I will check that and make sure that you do—the tribes do get the annual report. Take that as a personal... make sure that happens

and if you are willing, sir, you can call me I've got a number. (Multiple voices.)

Hargrave: Okay, Chairman Hall, we can handle this maybe a couple of ways. We have one more presentation and I think, okay, Becky, if you want to go ahead and do your presentation and then we will open it up for discussion and comment by Chairman Hall.

Otto: My name is Becky Otto; I'm the archaeologist with the Omaha District Corps of Engineers. Rose and Russ and Rick are all at the regional office; I'm at the district.

(End of Tape 7)

Tape # 8

September 13, 2001 P.M. Becky Otto – U.S. Army Corps of Engineers

September 13, 2001 P.M. Tex Hall, Chairman, MHA Nation

Otto: Some of you and other projects and I am looking forward to working with all of you on this project.

One of the things I wanted to tell you is I've been peripherally involved with the Master (inaudible) and Phone Manual and I just wanted to give you a short slide

show on Section 106 of the National Historic Preservation Act and then I'll give you an update on what our district has been doing lately.

Yellow **The district or your shop (inaudible); cultural resources?**

Bird:

Otto: **The district.**

This is a brief outline of the Omaha District's Cultural Resources Program and our desire is to work together with tribes. We have had a fairly large district; we are responsible for kind of maintaining for the (noise) under our care.

Military land and then Corps actions related to off-project lands because regulatory permits like the Maple River Dam in southeastern North Dakota comes to my mind. We have stewardship responsibilities for cultural resources; we are directed to protect, preserve and manage sites for the benefit of generations to come. The key legislation for this is Section 106 of the National Historic Preservation Act of 1966 as amended.

This Section 106 directs a Federal agency to take into account the impact of an undertaking on sites that are either listed on or eligible for the National Register of Historic Places. It also requires consultation with the State Historic Preservation Office, the Tribal Historic Preservation Office and it encourages participation by the Advisory Council, which acts as a referee between the State and Federal

governments and the tribes and other interested parties. Anyone who identifies themselves as an interested party can participate.

We've got some major challenges in our district. There are actually over 4,000 sites within our district. Many hundreds of isolated finds which could be anything from a hay rake to a stone tool and there are about 6,000 or so land miles many of which are eroded.

Hall: Is that on... 6,000 miles do you go all the way down to below St. Louis or, Becky, how far down?

Otto: Those are the shoreline miles around the reservoirs.

Hall: (Inaudible.)

Otto: No, not river miles.

Hall: Okay!

Otto: Just around each reservoir.

What is an undertaking? An undertaking is anytime the Federal Government spends money on a project, issues a license or permit for a project. Anytime the

Federal Government causes something to occur then you get involved with Historic Preservation Offices with the tribes and the State and look at whether or it is going to impact significant sites.

Environmental assessments can be part of the components process in this case it's an EIS or the Master Manual. Permit action, construction projects and any land transfer (inaudible) could also be in the (noise) (inaudible).

We are going to try to work on a new PA the (inaudible) agreement that we had with the State Historic Preservation Offices for the Master Manual needs to be updated. We'd like to include the tribes in a new (inaudible) agreement and we invite all of you to join together with us and put together some of the language, some language that needs to be in the new PA.

Yellow Are you talking about Galloway's PA? For (inaudible) South Dakota and
Bird: Nebraska. (Inaudible) letter of foreclosing?

Otto: Yes.

Yellow And you are including tribes?

Bird:

Otto: Right.

Yellow Well, shut my mouth!

Bird:

Otto: Okay, I thought I'd show you some pictures of archaeological sites that are eroding and have been stabilized. This is the Molstad earth lodge village on the Standing River Sioux Tribe. This site is a National Historic Landmark and has stabilized riprap.

This is the Whistling Elk site is a little bit downstream from Pierre, South Dakota and another earth lodge village that's been stabilized riprap. In order not to impact those sites, we put a layer of quilted fabric on first then a layer of soil and then the big trucks came dumped the rock but at that Whistling Elk site.

Another shot of the riprap. In this particular instance some of the vegetation has grown up and kind of camouflaged the riprap on this site as a result the stabilization.

It's rippling up again. This particular site is called the Howe's site and here we've got block (inaudible); it's a little bit harder to protect. But that's another site that definitely needs some help.

This is the Haven site in (inaudible) Town, North Dakota. The rock riprap here protects the site when the water get high (inaudible) photo. The Lake Oahe is quite low and the water isn't hitting the site.

This is Stoney Point, an earth lodge village on Big Bend and that site has also been stabilized.

In summary, all the Corps' actions must comply with Section 106. We've got (inaudible) responsibility over a large area and we realize there are many opportunities to work together and we look forward to working with tribes.

Just have a few other things to say. The operation of the Mainstem Dams is an undertaking. So it needs to comply with Section 106. It has the distinct potential to impact sites by raising and lowering the pool elevation.

We've been compiling a cultural resources database and we've got 90% completion on almost all the reservoirs with the exception of Lake Oahe, which is 50% complete. We haven't started on Lake Sakakawea yet and that database is available if anyone is interested.

(Inaudible) information is being used to do. Help us raise cultural resources (inaudible) plan.

So far we've got draft cultural resources (inaudible) plan for Gavins Point and Big Bend Reservoirs. Those should be coming out shortly for review by tribes; they give either council. We are beginning to contract for a cultural resources

(inaudible) plan for Lake Oahe.

Voice: Who did Gavins Point (inaudible)?

Otto: Gavins Point was done by Burns and McDonald.

In the past three years we have done about \$1.7 million of bank stabilization on cultural sites within the Omaha District. There are many more that need to be stabilized but that is what we've been able to budget for so far.

Yellow And, I'm sorry, that period of time for the record?

Bird:

Otto: Since 1999. I have a handout I'll pass it around.

Randy Behm who was the cultural resources program manager in my office has been consulting with the tribes to help establish a priority list of sites that tribes would like to see stabilized. We've had good response from some tribes; other tribes were reluctant to provide information.

And in conclusion, we'd like to work together with you to build a better program for the preservation and protection of the sites in our district. So far we've worked closely with Lower Brule Tribe, Cheyenne River Sioux Tribe. We're working together with the Fort Peck Tribes and we'd like to work together with all of you

to build a better means of protecting sites in the district.

The other thing I wanted to say is that consultation won't end in 2003 when the Master Manual comes out. I view it as an ongoing process and we've been working with Mary Lee Johns on five big projects in the Omaha District. She's been helping us with tribal consultation and now I'd like to throw it open to questions, if anybody has any.

I've got a handout I'd like passed around.

Yellow Can we get a handout for the (inaudible), too?

Bird:

Otto: Sure. (Multiple voices, inaudible.)

The question was how did we acquire the data for the database? There are several ways. We used the site forms and the site updates so whenever someone visits a site they generally do an update form. There's also cultural resource inventory reports that have been done over the years and so it's two. So each site will have all the data that's available from those reports.

Yellow Are you the only one that has that, Becky?

Bird:

Otto: No, was there some hanging around?

Yellow (Inaudible) last three years?

Bird:

Otto: That is a handout of all the bank stabilizations that's been conducted within the Omaha District.

Yellow What's your total?

Bird:

Otto: Okay, I didn't total the whole thing up but since 1999 we have spent in excess of \$1.7 million on rock.

Yellow I have another one, where did I get that? This table bank stabilization effort for
Bird: the professional archaeologist (inaudible) in 1978? Fifteen sites all toll, 15 sites since 1978 and Corps funded a total of \$2,061,000.

Otto: When was that?

Yellow I don't know but there's on two separate years you didn't spend any money at all
Bird: but you estimated the value of volunteer service at \$15,000. Well, do you remember this (inaudible)?

Otto: Yes.

Yellow Then it says...the question I have is that 1999-2000 (inaudible) village. (Inaudible)

Bird: expenditures were \$96,000.

Otto: That would be rock.

Yellow And so that's a generous spending? Mary Lee Johns at Cheyenne River;

Bird: (inaudible). So is Mobridge in here (inaudible)?

Otto: It shouldn't.

Yellow I see them here but I don't know if it's the same thing. Maybe I should visit with

Bird: you about the difference between (inaudible).

Otto: Sure.

Yellow This only (inaudible) spending (inaudible).

Bird:

Otto: Okay, I didn't total up the whole column; I just wanted...we were only able to do what we get budgeted.

Yellow Yeah, that's kind of where (inaudible). So since 1978 you've only had just a little

Bird: over \$2 million or \$2.5 million dollars of that to spend on site stabilization. How do you get that money? How's that allocated to you to the department?

Otto: We put a line item in the Corps budget.

Yellow Who's we?

Bird:

Otto: The district office.

Yellow Unhuh!

Bird:

Otto: And then it goes before all the other districts division chiefs and then it's decided what the priorities are.

Yellow Okay.

Bird:

Otto: Rewinding generators on the Mainstem Dams get a higher priority.

Yellow Isn't the Division Chief the same as your Colonel?

Bird:

Otto: No. No.

Yellow (Inaudible) administrative person? In Omaha who's the Division Chief?

Bird:

Otto: Carl (inaudible-Name); (inaudible).

Yellow Van Cooper?

Bird:

Otto: Van Cooper is...okay, the Colonel is akin to a president; Van Cooper is akin to a vice-president.

Yellow Oh, division chief are?

Bird:

Otto: Are under...

Yellow Cabnica?

Bird:

McAllister: Yeah.

Otto: That would be a good analysis. (Laughter.)

Yellow Follow the mother here; follow the mother. (Inaudible.) Okay, so the division
Bird: chiefs get together and, depending on what the Corps needs, allocations are made. And so they let you guys get a chance to come in and say, I mean you guys are shocked, the archeologists, get a chance to come in and say what you need. What do you ask for and based on what? My question on these amounts that are allocated, what's your criteria? Is it archaeological value of the sites that these are all sites have high archaeological value; that's why these sites get stabilized? Or is

it because of their status, they're endangered status? If they are wicked, endangered then you are going to get in there and fight for proper stabilization.

Otto: Right. These sites are all either on National Register or...

Yellow Okay, so they are high archaeological value.

Bird:

Otto: Or eligible for the National Register.

Yellow Okay, so high archaeological value, right?

Bird:

Otto: And currently over...

Yellow Currently you are (inaudible) with no differentiation in the battle for that erosion?

Bird: Are these wicked, endangered or just eroding, how do you choose them over other sites?

Otto: We had a couple of different symposiums and then recently we consulted with tribes.

Yellow Recently in the last ten months that Randy Behm was in his job, prior to that you

Bird: guys didn't...

Otto No, actually...

Yellow No, no, no.

Bird:

Otto: Actually there is a little category down there that describes tribal consultation about in the middle of the...

Yellow Recently consulted the tribe could help identify... But let's these budgets here the

Bird: ones in the handout that you gave, those here. How did you guys decide to fund those sites in particular since 1978?

Otto: National Register or (inaudible). And then by talking to tribes.

Yellow And when did talking to tribes start?

Bird:

Otto: Okay, I don't have that in front of me.

Yellow Oh, yeah, I have them.

Bird:

Otto: In 1980, 1999 and (inaudible) March of '99 (inaudible).

Yellow May of '98. (Multiple voices, inaudible.) For the tribes, from '98 on. Because

Bird: normally you guys can't and you brought us that list of endangered sites; you guys

already had the list yet you brought to (inaudible) We didn't have any input, you just said, Sandy, hey, these are the endangered sites, here they are, we're working on them. That's not consultation. All right.

And so then you guys go to your division chief and say we have all these sites based on this criteria, then what happens?

Otto: Before we do that we'd have to fill out what is called an (inaudible) sign a routine (inaudible) request.

Yellow Ah! (Inaudible.)

Bird:

Moore: Right. Those are sent off to George Wolfe in the (inaudible), you know the people that run the (inaudible). Ordered that we (inaudible) and then they have the opportunity to review (inaudible) ordered and then the districts come together and discuss which things get buttoned.

Moore: A little ranking process that they go through in the district, bring in the engineering division; plans division; operations division all get together and start ranking everything in the (inaudible) budget. Is what they do.

Yellow They rank it and then what did you say O&M budget?

Bird:

Moore: Operations and maintenance budget go in and budget proposals for two years out. They are putting that budget together.

Yellow Unhuh!

Bird:

Moore: Put that budget together and after the districts put the budget together, they send it to the division; division takes a look at it and (inaudible) do a balancing between five districts now versus two districts several years ago. You look at everything; what has a higher priority whether it's maybe we are looking at some problems with navigation locks, dredging, dams (inaudible); all these are competing for the dollars and then they'll put their... they'll say okay so rank it. Do a ranking and then from there it goes into headquarters. Headquarters takes a look at it; headquarters of the Corps of Engineers takes a look at them. They go through like a ranking process also looking at the budget and balancing that against *all* the divisions.

Then the headquarters of the Corps of Engineers then submit it to OMB. OMB then they have another opportunity to rank it (inaudible) again. So from there it becomes part of the Presidential Budget and this is his selection he submits to Congress. It could fall out in Congress and Presidential negotiation it could fall out then. So it's a long, long way with so many places where these things could fall out if you put it in as an ONWR line item. Specific sites do this amount of work. It could get chopped along all those places.

Now if it does get lost in those places that's where tribes can be very helpful in funding. They can say we've got this priority list of cultural resource sites that are highly eroded, wicked, eroded ; they are going to lose them. Congress we would like to have you help in funding those sites; protect those sites.

Yellow Wonder if the Commander places a really high priority on sites stabilization and
Bird: the preservation of sacred and cultural sites?

Moore: Right?

Yellow What happens then? How can then, during the shuffle how does that play out?

Bird:

Moore: This happens also. We get our budget back down there and we are going along with the budget and all of a sudden they have some slippage. The contract doesn't get awarded. We have X number of dollars sitting there that needs to be spent this year; where can we... Commander then has discretionary authority. He has to sit there and he's got to look at, okay, the engineering, do they need it, operations need it; planning need it. Who needs that money the worst? What is the priority? Then he makes the decision to move that money to whatever he feels is the highest priority. It could be a cultural resource site. Or it could be the new OCB, oral circuit breaker, for a particular power plant. Or it could be whatever!

Yellow You are saying the planners only realize (inaudible) within his district?

Bird:

Moore: His what?

Yellow Within his district?

Bird:

Moore: He has discretionary authority, yeah, within his district. If there's money that has been identified as slippage. This contract is not going to get awarded or let this particular year and we have this amount of moving that money that we have to expend. We need to expend. Now where am I going to put it?

Hall: Based on the process this goes to, apparently these tend to fall through the cracks by (inaudible) \$40 million backlog.

Moore: We have a larger backlog than that. Yeah, we've been identified somewhere over \$110 million backlog in the Omaha District. Then the magnitude goes out for our districts and it's in the *billions* of dollars.

Hall: (Inaudible) cultural resources?

Otto: Well, I think he was talking about the whole.

Hall: I'm talking about cultural resources.

Moore I don't know what the backlog is for cultural resources for a dollar amount. That's whatever all the priority sites are that that have been identified I guess if they are not done then it's a backlog. It's not with them.

McAllister Rick, aren't there rules about at what level of the budget you could put different types of projects.

Moore: Right.

McAllister: So add another factor (multiple voices, inaudible).

Moore: There's a budget matrix that has very specific verbiage in that says if it's baseline it's like level one. Baseline means you do this every five years, you to pick your site salaries. Then you go to level two, it's imperative that it be done. If it isn't done, then we'll have failure at some point in time. Now if you go to level three is, yeah, it's important but it's not quite that important if it doesn't get funded; it doesn't have...not going to be catastrophic in nature so to speak.

Yellow So on that budget matrix when say a Congressman goes to work and gets you \$2.8
Bird: million to do shoreline stabilization and the \$2.8 million doesn't get spent for shoreline stabilization; what's going on there? That was back in the late '80s and ever since (inaudible) with Senator Connors and he told us he got \$2.8 million for

shoreline stabilization for all our districts but (inaudible). How did that happen?

Moore: I don't know.

Yellow From your comments we have a lot of influence when we go to Congress;

Bird:

Moore: Yeah.

Yellow Sure we do have but...

Bird:

Moore: You do then. I don't know; I don't know the particulars about that, Pemina, I wish I did. Can't answer it but...

Hall: To (inaudible). (Laughter.) (Multiple voices.)

Moore: I don't know what happened; I...

Yellow Well, Becky, you've been there a long time. What happened to that \$2.8 million?

Bird:

Otto: I'm not familiar with that at all.

Yellow Aah, okay.

Bird:

Otto: When was that?

Yellow: Late '80s. Senator Conners told us that. We went there to say we need some
Bird: money for shoreline stabilization to protect out sites. (Inaudible); he got mad, he
said, "I got them money—\$2.8 million. If it's not all there it's spent on something
else."

Hall: It might behoove the Corps to respond to that in writing, addressed to that effect.
So that way you have the Chairman of Budget Committee confirm (inaudible). He
did make that comment.

Moore: Yeah. We'd have to go back, look at the record and research. I don't know.

Yellow: Maybe you ought to do that because you could do that, Rick.

Bird:

Hall: It would be very important.

Moore: Okay, I'll have to ask the district office to do that. Different office. (Multiple
voices, inaudible.)

Yellow: On the record now, you (inaudible) the book. It's on the record. (Multiple voices.)

Bird:

Hargrave: That's all of the presentations we have and I'm not quite sure... we certainly want

to open it up for discussion. Chairman Hall did you have any summary comments you wanted to make or...

Hall: I could make a few comments (inaudible). I'd just like to focus everybody in the Corps and this Federal agency's attention to the policy agreement. Department of Defense (inaudible) policy was passed October 1998. I really appreciate this policy because it talks about trust responsibilities.

(End of Side 1, Tape 8)

Hall: Fiftieth anniversary of our Treaty of 1851 and basically said it's a legal obligation of the United States to the tribes and referenced the other third sovereign in this country. This is a good policy and it deals with establishing senior level tribal liaison which I believe is Chick Spence; I hope Chick is all right.

McAllister: Yeah, he is.

Hargrave: Yeah, he is.

Hall: I heard he was close so I really appreciate hearing that because I think he's working for the benefit of all the tribes (inaudible) and in that regard (inaudible) that relationship. And also talks about Indian (inaudible) preference item.

Okay, so my first point is my Congressman (inaudible). My first point on the Randy Behm's position and I hope that his research with Native American prior to this meeting was a very critical position. At the end of the day it's going to get down to finding we need major funding this issue of cultural resources following your presentation today. And so I think there needs to be a...and I don't know how the Corps advertises for positions but I know that many of the advertisements are not...the tribes are not seeing those perhaps. So I would offer like *Indian Country Today* is a national Indian newspaper. That would be a very appropriate manner for tribes to advertise for positions. You advertise now?

Hargrave: Umhuh.

Hall: Okay, I would recommend that we advertise again through that and that's one...

Voice: When?

Hall: That's one point and the second point is the joint tribal commission. Again I would recommend for the record that we establish a joint commission because I think that that would show an example of tribes and Federal Government, in this case the Army Corps of Engineers, establishing a working relationship for a formal partner and we establish (inaudible) the real benefit. If you work on the budget, we have a National Tribal EIA Budget Advisory Council. We work on the budget, as it's hard for the Feds to lobby so if we are working together we can do

that. Also it's an ongoing consultation, because consultation is always a Catch 22.

And thirdly, I will recommend that (inaudible) point that the Advisory Joint Commission include all the tribes along the Missouri (inaudible). All the tribes along it and clearly I would also like the tribes that represented here put a document together for us to review as tribes we are going to have a meeting probably in October, next month, at the Great Plains. The Great Plains (inaudible) pass a formal resolution with the attached criteria and I would offer a delegate also an alternate. So that way the tribes always has two delegates at the table, one going and one in case someone can't make it and then, of course, a budget (inaudible), I was on for two years, at least two years and at the end of the day (inaudible) budgeting and there's a lot of hopefully when this terrorist attack, of course, it's getting a lot of attention in Congress but things will have to go back to normal and, of course, (inaudible) minor share of a lot of this stuff.

But also with Lewis and Clark there a (inaudible) sign that the Corps is going to get a lot of money for various projects but here we focus our attention on restoration and preservation. (Inaudible) this was our opportunity to do that. So again a Joint Commission could really do that. And then we'd send that out to the Corps in terms of the resolution, the document establishment and budget we would send on to the Corps.

Thirdly, would be the consultation; clearly this is a critical issue for all tribes. I

would encourage each of the tribal people here that we make sure that when we leave the tribal councils and chairmen are fully aware of what happened today and that everybody is kept up to speed because this is a government-to-government issue. As we meet and move toward the public hearings that, I think, some tribes are asking for public hearing at their particular reservation—at their tribal nation, I should say, tribal nation.

That, I think, would be critical that the leadership is involved especially because this is on its track. The EIS and Master Manual is on its own track and it's going to go. We really need to stay engaged here. It's critical that tribes stay engaged. Offer that the Corps write a letter to each of the tribal chairman and councils. The Chairman can talk to each council. Or (inaudible) councils and on this issue of consultation, meeting with the Corps, I like what you said about having these hearings and have individual tribal meeting and then, of course, have the (inaudible) hearing on the Master Manual and EIS and all that. So again it's critical that the tribes leadership is aware of it.

Finally, I'll just say that as we (inaudible) to the Corps, as we look and move past the hearings and all that I think there is going to be some opportunities and tribes want to look at monitoring and co-energy some of these activities because with the Lewis and Clark they expect a lot of people and there *is* a lot of people coming right now and it's really hard for the Corps to manage it and monitor it. It's probably (inaudible) sites.

I think it's best that if the tribes would want to work out an agreement with the Corps on co-managing or monitoring the shoreline, protection of the cultural and sacred sites, we work out that mechanism. Of course, it's a budgetary issue as well, but the budgetary issue, I think, shouldn't stand in the way of prohibiting the Corps of wanting to work with the tribes in doing that because what could happen if we don't do that. There could be a lot of potential negativity where the tribes would not want to celebrate Lewis and Clark because of the increased amount of visitors that come in and with that you are going to have increased looting and so on and so forth. So I think if we do this and this is all in a real tight time block, but we still have time to do these things.

So I guess that's kind of outside maybe unless it could be included in a public hearing. Maybe it's in the tribal consultation individually, that's where some of the things could be addressed and I would say that I would offer that that be set aside during these times. We look at those tribes that want to do that and I know there are some tribes who don't want to do it again and want to get into tourism do. And some tribes who really do, so it's an individual tribal consultative issue. Those are the things that I would offer you.

And again I appreciate all the Corps representatives being here and all the tribe's people; this is a very important meeting. It's an expression of our sovereignty that we are here. Never take that too lightly because 150 years ago (inaudible). That

Treaty is why we are here; that's why we are in the United States Constitution and that's why the Corps has the trust responsibility and that's why we have a Federal policy that we have to follow. So it's critical that we all work towards that partnership and get some tasks accomplished in the next 24 months (inaudible) I think it also brings opportunities. Thank you.

Hargrave: We also, I understand, have an Elder here who would like to make some comments. Sir.

Elder: I'm known from Elder but I'm 62 years old and I guess I lived 62 years now and I always tell my relatives that I've only got 38 more years to live. (Chuckle.) So (inaudible) soon but I've been doing but it really doesn't bother me. I'm Ron Littleall and I'm from the Fort Berthold Reservation and I'm affiliated with the Mandan, Hidatsa and Arikara and I'm also part of the Atoka and Lakota people. Part of my family comes from down at Standing Rock. I have relatives over in Pine Ridge and Rosebud, Lower Brule, Fort Pontee, up in Fort Peck, two other, Spirit Lake, Sisseton and then my native family comes from the Three Affiliated Tribes.

I do have some type of education. I finished college with a BS degree in elementary education. I was in the United States military from 1963-1968. Served in Europe and in Vietnam and after getting out of the service I followed a dream and that dream is what brings me here today. That is dream is to allow me

to say what I am going to say.

It's very hard in my capacity, I'm not a political person; I don't work for anybody; I sort of kind of do my own thing. And there's a Creator that the Indian people look to and this Creator made (inaudible) possible, he made (inaudible) creation and evolution. Creation is what we deal with today; evolution is what we face. I don't agree with this EIS in any way; I don't agree with lot of the things the Corps of Engineers does because they pulled my leg too many times. Don't agree with a lot of the science people in many of the things I do because they also have lied and they also have tried to put me down. Put me in places where I've not appreciated... I don't appreciate being.

So sitting back here and listening to everything I don't know what I'll do when I say but one of the basic things is that I don't believe that the EIS is going to be complete until so many tribes get some of their spiritual leaders involved and we get down to the earth and contact this earth. The reason why I say that is because I went through Maple river project that the Corps of Engineers is involved in. They have all of their EIS; all of their archaeologists and everybody doing their thing but I went there and it took me two days to walk the whole area. Pemina and some others in doing that, in walking, I had 76 wood ticks on me. (Chuckle.) That's even downstairs. I got down on the ground and I listened to the ground; I listened to the wind; I listened to the water, to the trees, everything, nature and then I went and I told Pemina what was what. What scientist can't find, I found it. All I had

to do was pray to that Creator and ask him to utilize my body (inaudible) machine (inaudible) wants to find out if there's any graves in here. They couldn't find anything. But when I went and sat on the ground and cried and pleaded; I found graves—unmarked graves under that ground. And I told Pemina about certain kinds of fumes that were very, very significant in the trees. I walked along the water and I said I remember that in my time as a young boy going down to the Missouri River walking my mother would look around and she'd find certain kinds of roots, wild potatoes, wild plants, different kinds of teas, she'd find leaves of different kinds. I told Pemina there was pruits down there that no longer exists. I asked Pemina have you ever heard of or find out from people have you ever heard of this type of plant and I will mention it. Nobody that today exists knows about it and that's why she was asking that question of you. I ask, I told her when spirits talk to me through the wind, through the trees I relate words to her. I told her to find out what these words mean and she found out what certain words meant was that the ground, lay down onto the ground the original ground, there's people living there. Dirt blew in another group of people lived there; dirt blew in and another group of people lived there.

My uncle was talking about that ground washing out. I was invited to Fort Thompson. George Ironshoe, another relative and myself, we told those people there were three villages, two different graveyards and told them what kinds of people they (inaudible).

In doing these types of things relating to our people, our Indian people, some of us here we can't write proportionally I write everything I know, I write it down. I have two complete reports back there that I did EIS individual spiritual oxidation and down (inaudible) contact of what you guys are talking about on the Environmental Impact Statement. I wrote them for two different reaches. So I don't believe that the EIS can be complete without some of the Indian people going back and getting their spirits involved talking to this ground; they're still sacred and still connected with us.

I don't really agree with a lot of the scientists. The reason why is that scientists said we come here from Asia, we didn't. Been here over a billion years. Mandan people know the name of that (inaudible). (Inaudible.) Mandan's they say (inaudible). They know that. They have names like Three Horns, Three Hard Horns. Today we found out that (inaudible). (Inaudible) that's (inaudible) all kinds of ancient names so that's why I don't agree with the scientists; I believe that we came from a place that we call Garden (inaudible) and I believe that we went north and then as we went south the people were separated. Some were told they needed to go out (inaudible) some were told to make rock circles; some were told to make mounds; some were told (inaudible).

The Mandan people went way down south in the place called (inaudible). And when they got to that destination a fisherman came out of the water. When he came out of the water he made a noise, "Cuh, cu." He came out again, "Cuh, cu."

So these Mandan's said (inaudible) (Inaudible) have come to the end. And they turn around so we talk about old times (inaudible) Indians, always refer to (inaudible). They stopped at a place called Brazil; it's close to Biarritz, Brazil (inaudible) Wanaque. (Inaudible) Wanaque. Turning back to our home, we know that they came on. We know about two or three (inaudible). These are Sioux tribes, Mandan's so that's why I don't believe in what the (inaudible). Science work.

So I want to tell you guys is that why I don't agree with this EIS. I want to have Becky walk with me 6,000 miles around all of those dams... all of the lakes and I want to touch everyone of those sites she's talking about. Because I already know down there in Fort Thompson that there is a recent burial that's an ancient village (inaudible) ancient village underground; I know that for a fact.

So that's what I want to say to you people is that it's hard for a person like me, you know, I've a lot of hatred in myself. You are not supposed to feel that way but I grew up as a little boy playing along the river and the Corps of Engineers came to my playground there took all my food away, took all my lumber. One of the comments that was made here about electricity. The reason why the (inaudible) electricity is because we all lived log houses. We didn't have any TVs (inaudible) pre-electricity. (Chuckle.)

And you know what, some of those poor people believed us and they went on

about TVs couldn't plug it in anywhere in the hall. You've heard that, some of you Indians, you've heard that.

And so listen to us. EIS Environmental Impact Statement should not be considered complete until we have not a consultation but a connection with somebody that has some spiritual values. We have four (inaudible); four, that's the lowest value we have. The highest value that we go by is seven. If you have one down here then you talk to an individual like me. That's a one. And when you go to four you are talking about something more powerful. You are talking about the wind; you are talking about the air; you are talking about the grass and the earth. You are talking about other things; when you go to seven you are talking about laws. So...thank you.

Hargrave: I'll just open things up for questions here in a minute, but I kind of wanted to just follow-up on what Tex said a minute ago.

In terms of where we go from here, we kind of talked about it yesterday. I think for us to leave this meeting and just send another letter off to the Tribal Chairman is probably not the answer. When we go back, in addition to a letter, I think we are going to make personal contact, which is all the tribes represented here with regards to the consultation. So in addition to a letter, we need to go back and *really* follow-up on this in terms of the consultation and, in particular, the public workshops and the tribal workshops and hearings coming up that we really need to

get with the tribes on the ... We heard from Cheyenne River Sioux Tribes they would like a workshop and hearing and certainly that is open to all the tribes and we will make personal contact in addition to the consultations but also relative to workshops.

Yellow Bird: How do I (inaudible) not so much about ... we'll have some remarks too about where we'll go from here but in the 16 years that I as an individual have been working with Federal agencies like Army Corps, WAPA, National Park Service, whoever it has been, we always know that things went better when learning was a two-way street. You know, it is really important to say that in light of what my dear uncle back there shared. All of these days we've been here, we've been listening to the values that *you guys* placed on what's our world, our people's *homes* is the Missouri River and that these individuals not from our homes came here and placed a different value on everything—on the land, on the water, on our people—imposed a different value, okay?

And I'm hoping that everybody really took to heart what my dear uncle said because he's trying to tell you what *our* values is, okay? And when we can do that we sat and listened, we heard your guys, we didn't all turn to (inaudible), I know I didn't, when we heard it. Now it's really tantamount that you guys understand and hear *our* values, you see. When you can do that then things are going to go better.

So you say, "Where do we go from here?" Yesterday you said whatever you tribes

want, okay? We want you to listen to these good people like this who tell you what our values are, okay? They may be as confusing to you as yours are us but you've got to try and listen. Because then you'll understand why we're in here, *I* all these people (inaudible), why I'm always getting into your face. People like me are always getting mad at the Army Corps and if they get defensive about that or saying, "I wasn't here when that was done." You've got to listen. This means everything to us. Everything, what he said. That's why we are all sitting here, okay? If you (inaudible) I just feel the need to find it out based on the many long years of experience that we have had our North Dakota Tribes and South Dakota, too. Had a world of Federal agencies sometimes we talk and talk and talk to people—nothing changes. They don't get it. They'll get it! But *each time* we sit down with you guys we try again and again and again. Need to keep trying to explain our culture, our values, our beliefs to you because you guys, the U.S. Army has put you in charge of "managing" our river, our resources so we have to work with you in order for that to happen we really need you to understand us. We really need your guys to get it.

I just wanted to emphasize what this, my dear uncle, (inaudible) are *precious* to us. I just wanted to tell you, I wanted to emphasize that because if you understand it everything will go real good between us. If you don't, the frustration will mount and we will just continue having problems.

That's all I have to say about that except if we could please take a quick break and

then we come back. Go to work; we go from here?

Hargrave: Okay, we were going to open things up first.

Yellow You (inaudible) and then take a break.

Bird:

Hargrave: I mean unless folks want a break.

Yellow Ooh!

Bird:

Hargrave: You guys want a break?

Yellow I'm going to take a break; you guys (inaudible).

Bird:

Hargrave: Okay, Rick?

Voice: Kind of basic question was (inaudible). (Noises) Like a zero on the summary of the impacts? You with me? Out of the modified version (inaudible) some difference... unbalancing of (inaudible)?

McAllister: It's several factors, one is the unbalancing that does change things in the non-drought years and typically they unbalance...

Voice Okay, the non-drought...

McAllister: Also the non... real high (inaudible) years like 1997 where you just get so much water to move you not worried about what water is where, just trying to get it through the system and on out. Typically unbalancing would occur when you have not a lot of water coming into the system, it's kind of an average or in the middle type situation.

Voice: (Inaudible.)

McAllister: Yeah, (inaudible).

Voice: The other one is (inaudible).

McAllister: Well, there's also the droughts are in conservation and that causes differences too. Lake levels are different elevation so hydropower, keep the lakes up higher and get more hydropower.

Voice: Situation (inaudible).

(End of Tape 8)

Tape # 9

September 13, 2001 P.M. Closing – U.S. Army Corps of Engineers

September 13, 2001 P.M. Tex Hall, Chairman, MHA Nation

McAllister: Balance but let's a drought starts the year that Fort Peck has gone. (Inaudible) already starts the down three feet, the others are all whether four feet or (inaudible) come on down. Where it's supposed to be. So the drought starts and so initially the lakes are going to drop all down together and so you are still going to be lower than the (inaudible) lake. And so it depends on how the alternative... what year you start impacting a job starts impacting (inaudible) down until you are unbalancing or balancing the system. (Inaudible) happen the same year because unbalancing starts when storage of waste reaches a certain level at each one of the lakes. They are, as soon as you hit that trigger point in one of the lakes then you stop unbalancing.

So it depends on each run it might be unique to where you started. So if you started with what may be unbalancing one alternative, that lake may be lower throughout the whole drought because you never quite completely get back to balances, remember when we still try to unbalance... it's not really unbalanced but you've got power you are trying to move through and you try to keep in place...

Moore: We've got six lakes and we could have a drought in Montana and not have one

McAllister: But we would still try to balance the effects of that among the lakes but at certain points during the year it may not be truly in balance. Say you've lost 20% of your storage...

Voice: The reason we talked about that (inaudible). Now the Gavins Point alternatives. You know they get (inaudible). When we first (inaudible) navigation of (inaudible) one point. But once you get into the alternatives some say alternatives (inaudible) navigation could affect them up to 80%. That's almost the alternative that you described. Because there's no way that anybody that's on the stretch of the river can pick an alternative (inaudible).

Hargrave: Unless Congress says Corps don't support navigation anymore or propose (inaudible) scenario (inaudible) navigation now. That can have...

Hall: Hydropower (inaudible). Anyway, this one on this (inaudible) ...

Voice: There's one on this 2028 (inaudible) some of the alternatives (inaudible). There's one where's there's 2028 (inaudible).

McAllister: In 1994 we put out a Draft EIS and it had a spring rise of 20-kcfs so that could be part of where you from. It had kind of a *longer* spring rise. It was 45-days long or no it was 90-days long that one but it also (inaudible) the minimum service later in the year and tend to stay down (inaudible). Yeah, we have alternatives that did

have some of those same numbers.

Voice: Is there a (inaudible) alternative (inaudible); do you have or did you have (inaudible)?

Hargrave: Is there a preferred alternative?

McAllister: No. What we are going to talk about is the full Environmental Impact Statement process is that if one were to, say you may change the Gavins Point Dam, you have several ways to do it. You kind of go to what the U.S. Fish and Wildlife Service has said. And then they talk about going with the middle of the range. We are saying well, if they give you a range to go to, maybe you might go to the smallest change from how we currently operate. Start there then over time if you needed to or you got new information you might expand on out and put up, for example, the options we have there, we have an FCP with no spring rise and if we have to put a spring rise out you might start with 15 instead of 20. Start at the bottom of the range and work your way up if you have data that supports putting a higher spring rise out. Go to where the changes are the least (inaudible). So if you look at that hydrograph that shows the white line on it and the other lines on it, you might go to where the white line is but it's the smallest change from how we currently operate. Might be GP1528 instead of those options.

Voice: That's due in large (inaudible) on the lake (inaudible) 2028 (inaudible) one or two

percent changes that's a positive affect I always just look at (inaudible) 1528, I don't know (inaudible) 2021 and 1521 they're the ones that have navigation (inaudible).

Hargrave: We are considering, just so you kind of know those GP alternatives. We are giving coverage under the National Environmental Policy Act (NEPA) for the full range so that we could start as high as 20 go as low as 21 on the low summer flows. So we are getting full NEPA coverage to do that if one of those alternatives were selected, we would probably pick a starting point and then go from there but we are giving coverage to move up and down. If a Gavins Point alternative were selected.

Voice: How are you going to get earlier comments (inaudible)? Wondering, you know, if Mni Sose writes comments and then the tribes, if Fort Peck does and then the States and then (inaudible). You know all these folks, how are we going to weigh these comments?

Hargrave: Okay, first of all, it's not a vote and we are making that real clear to folks. It's not a vote.

McAllister: (Inaudible) rivers, for example, (inaudible)

Hargrave: *Thousands* of emails.

McAllister: We'd have thousands of votes for certain alternatives. That's not fair.

Hargrave: What we are encouraging folks to do and of course, the tribes that's a unique gap. So for the little bit different and I'm not the decision-maker who's ultimately going to weigh all of this but I would (inaudible). You know the tribes certainly have a special status even above that of the States. But one of the things that I know the Corps will be looking hard at is when these projects were authorized Congress said you are going to operate them for these purposes and I know the Corps' going to be looking at we still have to serve all those purposes. The Corps is also going to be saying well, that's ready, we have to comply with the Endangered Species Act and the environmental laws. So to think that we are going to have an alternative ultimately for what's in here is going to make everybody happy—it won't! This is going to be (inaudible) either way. But in terms of the comments, what we are encouraging folks to do is—it's not volume on comment—it's the contents that count. So when we get these two-line letters that say, "We don't want the spring rise," or two-line letters that say, "End navigation." They don't give us a lot of...so one of the reasons why we are here today and why we are doing all these workshops and what we want are good things that give us some real food for thought on which the tribes go. That's what we are seeking.

Hall: (Inaudible) my question is (inaudible) tribes, if they get a benefit from it (inaudible) population (inaudible) say at Gavins Point (inaudible). I think what you're talking about is in the whole scheme of the thing is the level of (inaudible)?

Hargrave: Level of the lake?

Hall: Level of the lake (inaudible) that's what you're talking about (inaudible).
(Inaudible) another alternative maybe we have (inaudible) under operations
(inaudible). Talking about an area that was (inaudible).

McAllister: Well, one thing that's important is that if you *don't* express your opinions then no one knows what they are and then you've lost. You need to definitely take time to express your opinion and I would say secondly, not only express your opinion to us but there will be other people out there with various forms that will be trying to see if there is some sort of compromise position and maybe like Missouri River Basin Association that may be trying to do it. It may be the Missouri Natural Resources Committee having a meeting where they are talking about trying to find some sort of compromise position; that there may be the State of North Dakota may have some meetings where they have fellow constituents to come in and talk about this and tell us what we should tell the Corps.

What I'm saying is make sure you have your opinions be well known throughout the area and participate in as many different activities as you can undertake and if you can't make sure that you let someone else know what your position is so they can share that with whatever institute is out there. Because there's going to be... not only is the Corps going to sit down and we are going to scratch out head in

the office; we are going to be looking and listening to is there some maybe some (inaudible); everybody is kind of... they don't really like but they are not going to sit there and fight it.

It may not be GP1528, it may be GP2028. Whatever we see that there is some sort of consensus building around—that might be where we end up going. And the feedback that we will get will be from individuals, it will be from large groups, it will be from large meeting, from individual meeting with each tribe and so the more we hear the same thing popping up at all these different meetings that's maybe telling us that there's some sort a common thread that everybody kind of agrees upon. That's going to really help a lot. That's one thing we said before as we go through and try to pick a third alternative for this Revised Draft EIS (RDEIS) is that we are going to listen to those things and probably pick something that has a lot of support behind us.

Hargrave: One thing, I think too that you can't rule here and truly when the Corps views itself as the honest broker here, we... you can tell there's a lot (inaudible) in the air here. You know, but there is something called politics out there. We certainly don't let it influence our study or any of the technical analysis or anything like that. But if you pretend it's not there you are burying your head. And ultimately the solution here make up (inaudible).

McAllister: And again, (inaudible) hear your voices.

Hargrave: Your voices and your opinion together.

Hall: Talk about those elevations. (Inaudible.)

McAllister: In fact, I wonder about that because when we start comparing rough computer runs of simulations that we do now it seems like Fort Peck sometimes... there's been a lot of changes and I'm always wondering if maybe it was slightly out of balance and was lower than the other lakes but I have way of verifying that in what little bit I've looked at it. But you may be right, it can be a little bit lower or one was a little bit higher and so when we look at changes under some of these alternatives where we supposedly *should* be higher, they don't appear to be much higher. So maybe Fort Peck was one that was just held a little higher too. Because I don't think there is ever any time that one can say that things are perfectly in balance. The lakes just don't go down like this. If we try to keep the lakes higher so in the winter you have enough head to generate out of the upper 2 or 3 lakes, there's always little balances and the lowest point in storage doesn't always come on the same day of the same month of the same year. So you are kind of comparing apples with oranges I guess is one way to talk about it.

Moore: We have a comment over here.

Voice: I have a question, all these dams up the river up from Gavins Point and due to the

recent disaster, tragedy in New York, does the Corps have an evacuation or is a disaster plan in place? I'm just kind of curious

Hargrave: And they followed it. They absolutely; they have plans that are already in place.

Moore: Are you talking about below the dams? Evacuation below the dams?

Voice: Yeah, below the dams. If Gavins Point were blown up; Yankton would go (inaudible) downriver, the whole bit or above us. One up above would affect all of us down.

McAllister: We heard sometime...

Moore: And that can happen.

McAllister: The governor of the State of North Dakota declared the highway that crosses the top of Garrison Dam closed.

Hall: Highway 212.

McAllister: No one is allowed to drive across the top of the dam. That is just to keep people from going out there...

Voice: So do the tribes have a copy of the disaster plan or evacuation plan? Do we have anything like that? I don't know.

Moore: The State Emergency Management (EOC) Emergency Operations Center, they, if anybody, has one they would have one in EOC. Now the Corps has done some studies to take a look at what would happen if there was a failure. And they have mapped out, GIS mapped out the area that would be inundated in the event of a failure. Now I'd have, in my office there, there is a lady, Kathy Bosick, who does part of the emergency management team. They have plans; I'll have to check with her because I know they have doing more on the Cascadia earthquake possibility out there around Tacoma/Seattle and so they may have one already developed for...

Hargrave: I think the Corps, they go through exercises like they pretend a tragedy happened and they go through a whole exercise on what so that the procedures are periodically... they are sure that they are in place and being followed.

Voice: Well, that's interesting because who would have thought what happened would have happened and within minutes it happened again.

McAllister: And in the case of those buildings they had looked at different emergency procedures but they never envisioned a plane hitting them at mid-level.

Voice: No.

McAllister: If there was something that would happen on top, a fire on top and the thing falls but hitting one mid-level so you have the whole top third of it all of a sudden goes, sssh.

Voice: Yeah.

McAllister: Even with all your planning sometimes you can't predict what that factor is going to be.

Voice: No. We thought about that if a plane, God forbid that ever happen, you know, run into a dam, total that thing.

Moore: That would be like, to be honest with you, if a plane, big 747, 757, crashed into one of our dams into the embankment there would be a big ball of fire, a burned out area and that's it. It wouldn't affect the dam itself as far as blowing it up.

The only place that would have problems is if they would fly into the gate area and knock out the gate, you know, open it then you would have an uncontrolled gate release. Or if it hit the power plant they would probably shut down possibly the hydroelectric power generation. We'd still have the ability to close or do whatever but if they ever got emergencies, spillway or gates then we are in real trouble.

Voice: I went out to see Murrah when that happened and a third of that building top come down with a truckload of explosives; I bet you there's no precautions to prevent that at Gavins Point you can go on it with a Ryder truck. Two times bigger than what the is, you know, would be a disaster.

Moore: Stop there right there by the plant there.

Voice: Sure. Right below it. We just asked that question if it anything should happen.

Moore: Emergency Operations Center check to see if there is any kind of a plan, emergency plan.

Hargrave: And the other thing, Rick, maybe you should make a note that the tribes are aware of the plan. I think it's something that we need to...

Moore: Yeah. Do you guys have EOCs? Emergency Management?

Voice: Some tribes do, some don't.

Moore: Yeah.

Voice: It's gathering more as they asked.

Voice: Kind of seems like everybody (inaudible).

Hargrave: I just want to wrap; thank you so much.

Moore: Thank you for coming.

Hargrave: Hall wants to do whatever contact —we're there.

(End of Tape 9)

