5. LETTERS FROM TRIBAL GROUPS AND FORT PECK TEST LETTERS

This section contains 13 letters received from the Tribal group representatives listed in Table D2-3 and 41 letters received regarding the Fort Peck flow tests (Table D2-4. Please note that, for the reader's convenience, these tables are sorted alphabetically by the sender. However, comment documents are printed in numerical order by the comment identification number (first column). The page number each comment document begins on is also noted in the tables. Responses to the comments coded (box with category and number) can be found grouped by categories in Section 4 of Volume VI, RDEIS Comments and Responses, Part 1.

Table D2-3. Summary list of comment documents received from Tribal groups, including response codes.

Comment ID Number	Tribal Group/Representative	Page Number	Response Number
T0300002	Cheyenne River Sioux Tribe	D2-111	Tribal-19; CR-9,12,15,16,17,23,24; EnSp-20; WRH-21; ErSd-32; Hpower-12; WS-6; Legal-34,35,36,37,38; Other-148,194,225,226,227,229,230,231,232
T1100001	Fort Belknap Indian Community	D2-160	Tribal-1,2,3,5,6,22; CR-6,12,17; Hpower-12; Other-26,269,270
T0400001	Fort Peck Tribes	D2-118	Tribal-21; Legal-39,40; Other-165,277
T0400002	Fort Peck Tribes	D2-119	Tribal-3,21,22; CR-7,12,15,17; Rec-27; EnSp-22,23; WRH-9,11,20; Fish-6; WQ-19; FC-9; ErSd-22; Hpower-14,12; Nav-30; WS-7; Hydro-32; Legal-41,42; Other-82,83,148,288,299
T0200001	Intertribal Council on Utility Policy	D2-104	Tribal-18; Hpower-13; WAPA-7,8,9.10,11
T0300001	LeBeau, Sebastian (Bronco)	D2-109	Tribal-47; CR-21,22; Other-148
T0500001	Lower Brule Sioux Tribe	D2-127	Tribal-23,24,25; CR-6,17; WQ-34; Legal-43,44,45; Other-46,148,270
T0600001	Mandan, Hidatsu and Arikara Nation	D2-128	CR-11,12,13,14,15,16,17,18,25,26,27; Rec-12; Legal-46,47,48,49,50; Other-148,182,270,277,304,306,325,326,327,328,329
T0100001	Mni Sose Intertribal Water Rights Coalition, Inc.	D2-103	Tribal-2,4,16,17; Hpower-2,12; Legal-33; Other-148
T0700001	Ogala Sioux Tribe	D2-135	Tribal-13,18,26; CR-6,12,13; Legal-51,52,53,54; Other-9,148,268,270,277,324,325
T0800001	Omaha Tribe Environmental Protection Department	D2-138	Tribal-18,27; Legal-55; Other-268
T0900001	Sisseton-Wahpeton Sioux Tribe	D2-138	Tribal-8,13,17,18,19,22,48; CR-6,17; Hpower-12; Other-268,269,270,299,306,321
T1000001	Standing Rock Sioux Tribe	D2-139	Tribal-13,28; CR 6,7,8,11,16,17,28; Rec-16,22; Fish-17; FC-35; WS-8; Legal-56,57,58,59,60,61,62,63,64,65,66,67,68,69, 70,71,72,73,74,75,76; Other-9,148,165,182,270,277,330,331,332,333

Table D2-4. Summary list of comment documents received regarding the Fort Peck test, including response codes.

Comment ID Number	Sender	Page Number	Response Number
PECK0026	Amos, Mike	D2-91	Hydro 9,36
PECK0024	Anderson, David	D2-90	ErSd 22
PECK0023	Bidegaray, Jean	D2-90	EnSp 21
PECK0028	Bidegaray, Reme	D2-92	Other 82,83
PECK0039	Bray, Rob	D2-100	Other 82,83
PECK0012	Bureau of Indian Affairs	D2-81	ErSd 22; Other 64
PECK0011	Carlson, Mike	D2-80	Rec 2; Fish 20; ErSd 5; Hpower 29; Other 63
PECK0013	City of Williston, North Dakota	D2-82	ErSd 22,25; Other 65
PECK0014	County of Roosevelt	D2-82	WRH 9; ErSd 22; Hydro 11
PECK0010	Dry Prairie Rural Water	D2-78	ErSd 22
PECK0001	Fort Peck Tribes	D2-67	Other 334
PECK0016	Fort Peck Tribes	D2-84	Other 334
PECK0017	Fort Peck Tribes	D2-85	Other 334
PECK0025	Fullmer, Russ & Holly Sugar	D2-91	FC 29
PECK0015	Garwood, Edgar	D2-83	ErSd 28; Other 82
PECK0021	Garwood, Ronald	D2-89	Fish 18; ErSd 28; WS 18
PECK0030	Hardy, Boyd & Shirley	D2-93	ErSd 22; Hydro 36
PECK0033	Hardy, Boyd & Shirley	D2-96	EnSp 28; FC 29; ErSd 22; Hydro 36; Other 12,124,275
PECK0035	Hardy, Tim	D2-98	Hydro 11; Other 12,82,83,124,197,275
PECK0034	Henderson, John	D2-97	Nav 52; Other 82,83,188
PECK0038	Holen, Bob	D2-100	ErSd 22; Hydro 13
PECK0037	Holen, Chris	D2-99	ErSd 5; Other 82,83
PECK0027	Latka, Rebecca	D2-92	Other 7,82,83
PECK0029	Lone Pine Ranch, Inc.	D2-93	Other 82,83
PECK0031	Mattelin, Buzz	D2-95	Hydro 9,36; Other 82,83
PECK0004	McCone Conservation District	D2-73	Other 220
PECK0007	Missouri River Natural Resources Committee	D2-76	Fish 13,22
PECK0009	North Dakota Game & Fish Department	D2-78	Fish 22
PECK0002	North Dakota State Engineer	D2-71	FC 18; Hydro 19,20,23
PECK0006	North Dakota State Engineer	D2-75	Hydro 19,20,23
PECK0042	Raaum, Jamie	D2-101	Other 82,83
PECK0044	Raaum, Jennesy	D2-102	Other 82,83
PECK0043	Raaum, Terril	D2-102	Other 82
PECK0036	Roth, Nickie	D2-99	FC 29
PECK0019	Burns, Senator Conrad	D2-88	CR 1; EnSp 4; ErSd 24; Hpower 29; Hydro 25,9,22,10,23,20,2; Other 82,87
PECK0018	Conrad, Senator Kent (Shirley Hardy)	D2-87	Hpower 8; WS 17; Hydro 24,11; Legal 81; Other 82,83,223,224
PECK0032	Shae, Jerry	D2-96	Hydro 9; Other 82,83,188
PECK0003	State of Montana DNRC	D2-72	ErSd 24; Hydro 21,10,22; Other 62,82
PECK0005	State of Montana DNRC	D2-74	ErSd 5; Other 82,83
PECK0022	Thiesson, Allen	D2-89	ErSd 22; Hpower 29;
PECK0041	Weinmeister, Victor	D2-101	ErSd 22; Other 82,83

PECK0001

FORT PECK TRIBES

Assiniboine & Sioux

May 30, 2001

Ms. Becky Latka
CENWO-PM-AE
~~215 North 17th Street~~
Omaha, NE 68102

Entire Letter
Other 334

RE: Fort Peck Mini and Full Tests and Future Operations

Dear Ms. Latka:

Please refer to our previous correspondence on this subject dated November 19, 2000, and March 15, 2001. The Tribes continue to correspond with you to ensure preservation and protection of our valuable Missouri River and its valley between river miles 1621 and 1762, a distance of 141 miles (with minor exception) along the River on the south boundary of the Fort Peck Indian Reservation.

The Fort Peck Assiniboine and Sioux Tribes appreciated the initiative of the Corps of Engineers to visit the Tribal Council on February 16, 2001, and on April 30, 2001 to present plans for the Fort Peck Mini Test and future operations of Fort Peck Dam. The Tribes further appreciated the Government-to-Government consultation provided by the Corps of Engineers consistent with Executive Order 13175 and the decision by the Corps of Engineers to refrain from testing or further changes in the operation of Fort Peck Dam until our concerns are fully addressed and plans, acceptable to the Fort Peck Tribes, are developed. Until acceptable plans are implemented, the Tribes oppose the testing and any change in future operations to accommodate a spring rise.

Bill Miller, John Remus and Becky Otto staff were highly courteous in the last meeting and made meaningful presentations to the Tribal Council respecting the proposed mini and full tests and the future spring rise. We regarded the meeting as a continuing step in consultation. Our November 19, 2000, and March 15, 2001, letters requesting plans from the Corps to accommodate a variety of issues were not addressed by Corps of Engineers staff during the meetings, nor was a response expected that quickly. However, the Tribes continue to expect specific plans from the Corps of Engineers with regard to the following:

- Plan for protection of our regional MRI intake site and related facilities in the floodplain (PL 106-382), including a plan for repair and/or replacement of those facilities if damaged by future operations connected with a spring rise or otherwise;
- Plan for funding additional water treatment plant costs associated with enhanced levels of suspended solids caused by the spring rise;
- Plan for protection, mitigation, replacement and associated financing of existing intake sites along the Missouri River within the Fort Peck Indian Reservation for the Fort Peck Irrigation Project, other private intakes and newly proposed intakes;
- Analysis of the impact of future operations on erosion of the north bank, including maps (GIS) of the Missouri River Valley outlining soil types, geologic anomalies and other factors relevant to erosion;
- Plan for compensating landowners for erosion;
- Plan for safety during testing and future operations, including assessment of the spillway to perform properly;
- Plan for protection of human remains, cultural, historical and archaeological resources;
- Plan for baseline measurements and future monitoring of resources including water quality, total sediments, aquatic habitat, riparian habitat and other resources;
- Analysis and presentation of benefits of spring rise to Fort Peck Assiniboine and Sioux Tribes.

We asked for a timeframe for response to our request for consultation and coordination and expressed our willingness to meet with the Corps of Engineers at any time.

Since the meetings there has been progress on a contractual relationship between the Tribes and the Corps of Engineers to inventory cultural resources along the Missouri River Valley. Because more time (an additional year) is available before the mini and full tests, the Tribes have determined that it would be appropriate to undertake more responsibility for the collection of baseline information related to riparian habitat, namely the cottonwood forest zone within the Reservation. Corps of Engineers staff member, Mike George, was clear during our February meeting that a program for restoration and regeneration in this ecological zone is needed, and such an effort would be supported by the Corps. Enclosed, please find a proposal to undertake necessary investigations on the subject of the cottonwood forest zone.

Mr. Miller has also referred to the development of a monitoring plan in conjunction with the U.S. Geological Survey. While the subjects to be included in the monitoring plan were not discussed in detail, the Tribes expressed their interest in participating with the Corps and USGS in the development of that monitoring plan. We are hopeful that you can correspond with us to accomplish this objective. (You may also wish to review our "needs assessment" that was furnished pursuant to section 203 of WRDA 2000).

Poplar, Montana 59255 P.O. Box 1027 (406) 768-5155 Encl

Total sediment discharge and analysis is one of the areas of monitoring that was discussed at the meeting and has been the subject of correspondence from the Tribes' consultant and Mr. Miller. This part of the monitoring program will provide additional insight into the movement of sediment in the Missouri River below the Dam and identify with more detail the areas of erosion and deposition to be expected with future operations at Fort Peck Dam to produce a spring rise. Please find a memo to Mr. Miller (enclosed) on the subject of sediment discharge showing that limited, existing data indicate as much as a 7% increase in suspended sediment discharge at Culbertson, MT, with the spring rise.

The Tribes would appreciate correspondence from you outlining the steps you are taking to address our concerns and to move forward to implement the plans and analyses requested by the Tribes.

Sincerely,

Arlyn Headdress, Chairman
Fort Peck Assiniboine and Sioux Tribes

cc Mr. Bill Miller
Ms. Rose Hargrove
The Honorable Max Baucus
The Honorable Conrad Burns
The Honorable Dennis Rehberg
Tribal Council Members
Mr. Tom Escarcega
Ms. Mary Pavel
Mr. Mike Watson

PROPOSED RIPARIAN COTTONWOOD STUDY
MISSOURI RIVER
FORT PECK INDIAN RESERVATION

May 2001

Submitted to:
Corps of Army Engineers
Omaha, Nebraska

Submitted by:
The Fort Peck Assiniboine and Sioux Tribes
Fort Peck Indian Reservation
Poplar, Montana

Studies of the Platte River in Nebraska (Johnson 1994) found that cottonwood forests have colonized formerly active channels of the Platte River as a result of lowering of stream flows for irrigation and to fill dams. This finding differs from results reported by researchers in Montana and Alberta. Accordingly, Johnson (1994) observed that responses of the Platte River differed from responses of other rivers. He states that the divergent response observed, despite similar disturbances, indicates complex relationships among plants and geomorphic processes operating on floodplains and the difficulties in understanding, generalizing, and predicting the impacts of modification of stream flow on natural ecosystems.

Literature Review – Beaver

This section is included because the Fort Peck Tribal Council expressed concern over the extensive damage and mortality to cottonwoods along the Missouri River. Studies on beaver ecology and field observations on the Reservation indicate that beaver depredation on cottonwood is a major factor in declines of cottonwood forest on the Fort Peck Reservation. It is probable that historic operation of the Fort Peck Dam has influenced beaver population densities, distribution, and effects on cottonwoods.

General information on life history, behavior, and ecology of beavers is presented Olson and Hubert (1994) and Jenkins and Busher (1979). Beavers generally breed in January or February and give birth in May or June in lodges, constructed of mud and sticks, or in burrows excavated into riverbanks. Typically, bank burrows have underwater entrances that deter predators such as coyote and wolves and remain free of ice in winter.

Beavers live in family groups called colonies. Each colony of beavers occupies a reach of stream in common, uses a common food supply, and lives in the same burrows or lodges. Each colony is territorial and marks its territory with scent posts to deter use of space and food by neighboring colonies. Density of colonies and numbers of individuals varies depending on food supply, availability of sites suitable for winter burrows, history of flooding, and levels of mortality (e.g. from starvation, predation, trapping, and disease). Bergerud and Miller (1977) found that territorial behavior spaces colonies, dispersing populations within limits of food and water resources. However, territorial behavior does not prevent overutilization of food resources and population declines from reduced reproduction and increased mortality.

Beavers eat relatively large amounts of herbaceous vegetation in summer, but rely on trees and shrubs for critical winter nutrition. In order of preference, beavers eat aspen, willow, cottonwood, alder, and red-osier dogwood most frequently (Olson and Hubert 1995).

Dams can influence beaver populations by converting riparian areas to reservoir pools. Reservoir pools typically provide poor habitat for beavers because: shoreline vegetation is sparse, often lacking in favored food plants; reservoirs typically have unstable banks unsuitable for construction of burrows because wave action erodes banks and formation

of winter ice separates beaver from water (burrows and security from predation) and food (Brown 1989, Bissell and Brown 1987).

Mack and others (1990) studied how Kerr Dam on the Flathead River has affected beaver and other wildlife. They found that stream flow fluctuations caused by Kerr Dam caused winter colony sites to be de-watered, flooded, and subjected to extreme shoreline icing. Heavy icing followed by rising water levels dislodged beaver food caches.

Lesica and Miles (1998) found that high beaver populations on the Marias River of Montana greatly affect riparian ecology by destroying cottonwoods and allowing proliferation of Russian olive. They speculate that beaver populations may have been enhanced through flow regulation by the Tiber Dam that increases the number of potential den sites safe from flooding and severe drawdown. This effect on population is supported by studies of Collins (1976), that found dramatic population movements occurred when beavers abandoned dwelling sites (lodges and burrows) due to seasonally high and low stream flows.

Beaver populations are controlled largely by dispersal (Olson and Hubert 1994). Two-year old beavers leave the colony in late spring in search of mates. Dispersing two-year old beavers usually move 5 to 10 miles with moves of over 100 miles being reported. Mortality during dispersal is usually substantial.

PROPOSED STUDIES

Proposed Tasks

The following proposed tasks will be completed by a plant ecologist, a biometrician with experience with statistical analysis of vegetation data, and two field technicians. Estimated costs are included for each task

Task 1 – Obtain maps and aerial photographs

U.S. Geological quad maps and aerial photographs will be obtained for the portion of the Missouri River on the Reservation.
Estimated cost - $1500.00

Task 2 – Establish Continuous Forest Inventory (CFI) Plots

CFI plots would be located in forest communities on the floodplain of the Missouri River. Plot establishment and measurement would generally follow U.S. Forest Service National Forest Inventory and Analysis protocols. Plots would be located systematically with a random start within strata of interest. Up to 15 plots per strata (45 plots assuming three strata) are anticipated, consisting of clusters of three (3) 0.04 ac subplots. Each subplot would be permanently marked with metal tags in reference trees, photo documented, and located with a global positioning system unit. At the time each subplot is established, trees greater than 5 in diameter at breast height would be measured for data would

measured for species, diameter, height, crown class, condition, and age. Amounts of beaver damage to woody plants will be recorded for each subplot, as well. Within each subplot, microplots would also be measured to tally seedlings and saplings by species and size class. Foliar cover of associated shrubs and herbaceous plants would be identified for each species in the plot. Approximately 2 to 4 plots (6 to 12 subplots) would be established per day using a crew of two (2), depending on access and stand conditions. Remeasurement of these plots would take significantly less time in the future.

Estimated cost (135 subplots @ $300 per subplot) $40,500.00

Task 3 – Analyze Vegetation Data from CFI Plots

Data collected for CFI plots will be analyzed to determine vegetative characteristics of stand stocking and structure. Parameters that will be summarized include, at a minimum, trees per acre, basal area per acre, gross and net volume per acre, and relative density measures. Distributional summaries will present selected data by diameter classes, height, classes, crown classes, age classes, and/or condition classes. Age-diameter and age-height data would also be evaluated to identify significant relationships. Upon remeasurement of CFI plots, components of forest growth can be determined, including survivor growth, mortality, ingrowth, and removal. At that time, analysis of trends would also be possible, describing significant changes on stand stocking and/or structure.

Estimated Cost $7,500

Task 4 – Prepare Report on Status of Cottonwood Forests

After the data for CFI plots is analyzed and interpreted, a report will be prepared which presents the spatial extent, vegetation characteristics, seral ecology, community structure of cottonwood forests on the Reservation. The relationships among hydrology, cottonwood reproduction (or lack of reproduction), and age structure of cottonwood communities will be discussed. Projections concerning expected declines in cottonwood density and vigor associated with continued operation of the Fort Peck Dam will be addressed.

Estimated Cost $25,000

Task 5 – Prepare a Cottonwood Mitigation Plan

Because the continued survival of cottonwood communities is of substantial importance to the Fort Peck Assiniboine and Sioux Tribes, measures will be identified to enhance regeneration of cottonwoods in the riparian zone of the Missouri River on the Reservation. Proposed locations where cottonwoods could be established will be identified. Methods for regeneration cottonwoods and probability of success will be addressed.

Estimated Cost - $15,000

Estimated total project cost $89,500.00

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cmg 1/2/01
Becky L.

PECK0002

Office of the State Engineer

December 20, 2000

Becky Latka
CENWO-PM-AE
215 N 17th Street
Omaha, NE 68102

Dear Becky:

This letter is being written as a follow up to my letter dated November 9, 2000, and is being submitted as the Water Commission's comment for the full test of a spring rise from Fort Peck. Again, the Water Commission supports the Fort Peck spring rise tests but wants to reiterate the importance of monitoring the situation both before and during the tests.

With the continued drought conditions being faced within the basin it is imperative that the tests be postponed until there is adequate water in Fort Peck Reservoir. If low water levels in Fort Peck preclude the mini-test in 2001, the full test should be postponed until the year after adequate water is available to complete the mini-test. Hydro-19

The Water Commission is very concerned that the spring rise does not cause downstream flooding along the North Dakota reach of the Missouri River upstream from Lake Sakakawea. The irrigation of high-valued crops in this reach is essential to the economic well-being of both the irrigators and the surrounding communities. In order to prevent flooding of these crop lands, the Corps needs to monitor the following; the water level of Lake Sakakawea, the flows from the Yellowstone River, and the total flows (not only the releases from the reservoir) on the Missouri River. Hydro-20

On June 24, 1999, the stage at Missouri River Stage Gage No. 6, located at river mile 1576.0, was 25.07 ft which caused minor flooding mostly limited to the drains in the Buford-Trenton Irrigation District. Observed readings from flow gages on the Missouri River, RM 1620.76, at Culbertson, Montana, and the Yellowstone River, RM 29.2, at Sidney, Montana, were 9850 cfs and 52,900 cfs, respectively at which time Lake Sakakawea was at an elevation of approximately 1845.0 ft msl. These two flow gages are referenced because they are the nearest upstream flow gages from the area in question and are roughly equidistant from Gage No. 6. We expect that is Lake Sakakawea was higher less flow could be passed at a given stage at this gage and if Lake Sakakawea were lower the stage would be lower for a given flow. FC 18

Based on conversations with the Buford-Trenton Irrigation District it appears a stage of roughly 25.0 feet at Gage No. 6 would be the approximate maximum stage the area should be able to handle without causing large-scale flooding. It needs to be noted that these numbers are estimates and that the Corps need to diligently monitor the entire reach from Fort Peck Dam to Lake Sakakawea to insure against damage to downstream landowners. Based on this single data point, June 24, 1999, it appears this would be equivalent to a combined flow of approximately 62,000 cfs.

The Water Commission supports the process of slowly increasing the releases until full test flow is reached as a means to insure against downstream flooding. It is critical that Yellowstone flows be monitored so the total flow does not exceed 62,000 cfs. If Lake Sakakawea is above 1845.0 ft more caution will be needed to insure flooding does not occur near the confluence of the Yellowstone and Missouri Rivers. While the mini-test poses less risk of flooding than the full test, it is critical that the mini-test be monitored to insure against flooding and to provide data

900 EAST BOULEVARD • BISMARCK, ND 58505-0850 • 701-328-4940 • TDD 701-328-2750 • FAX 701-328-3696

emg 1/9/01
Becky L

PECK0003

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

MARC RACICOT, GOVERNOR

STATE OF MONTANA

1625 ELEVENTH AVENUE

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

December 27, 2000

Ms. Becky Latka
Corps of Engineers, Omaha District
ATTN: CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

Dear Ms. Latka:

The Montana Department of Natural Resources and Conservation offers the following comments as part of the scoping process for the environmental assessment of the Fort Peck flow modification "full test" scheduled for May and June of 2002.

The proposed spring rise from Fort Peck has attracted a great deal of interest among Montanans who live and work along the stretch of river between Fort Peck and Lake Sakakawea. On several occasions, we have expressed our concerns to Corps staff who are working on the spring rise project. In general the concerns which need to be addressed in the environmental assessment include: impacts to irrigation pump sites, municipal water intakes, and historical and cultural sites caused by high flows and debris;
the extent of erosion expected to occur at various flow rates; adequate safety measures including averting potential damages from flooding; and mitigation and compensation for damages due to higher flows.

In order to prepare for the change in flows, it will be essential that the Corps provide as precisely and accurately as possible estimates of anticipated river stages and velocities associated with various flow levels and identify river reaches likely to be impacted most significantly. Using USGS gaging station rating curves and Corps cross-sectional data, the Corps must provide estimates of river stages for flows between 10 kcfs and 35 kcfs for all pump and intake sites and assess the likely impacts of various flows. Owners of sites to be impacted significantly must be notified immediately. This information is essential so that people will know what river conditions to expect at various flows. Reasonable expectations will allow for more effective decisions regarding protection of water intakes, infrastructure, and banks.

Hydro-21

If it is not already included, we request that a measure of erosion be included in the monitoring program. Such a measure would provide an indication of the impact of spring flows on river conditions as well as on land use adjacent to the river. It is important that the measures for the monitoring program be included as early as possible so that baseline conditions can be

ErSd 24

to help in estimating the flows possible for the full test. Again, we ask that this office be kept fully informed as the tests are conducted.

Hydro-23

Thank you again for the chance to comment on such an important undertaking.

Sincerely,

David A. Sprynczynatyk
State Engineer

DAS:JP/1392

established. To protect banks jeopardized by higher flows, construction of structures may be necessary at sensitive sites such as across from the spillway.

In the interest of public safety, we strongly encourage the Corps to communicate plans for flow modifications sufficiently to warn the public of changes in river conditions. These warnings should be relayed through local media and posted at access sites. Also, the test plan should anticipate the possibility of a significant rain event on any tributaries between Fort Peck and Sakakawea and grant onsite authority to immediately reduce releases in the event of such an emergency.

Hydro-10, 22

Substantial investments have been made based on average flows for May and June over the last twenty-five years. These and future investments are central to the success of new irrigation projects and economic development efforts in the region. Many of these points of diversion may not be functional with the higher spring flows proposed. Any plan for implementing the spring rise must address mitigation of and compensation for impacts to banks, intakes, and infrastructure caused by alteration of the flow regime.

Other - 82

For many of us who deal with management of this large and complex river system, a spring rise represents the implementation of a fairly abstract operational scheme. For those Montanans below Fort Peck, the consequences of such a scheme are quite real and give rise to many urgent practical considerations. These folks will be the ones bearing a substantial portion of the basin's burden to mitigate for environmental impacts of operation of the river system. We owe them every effort to ensure that their concerns are adequately addressed. We urge you to continue to work closely with those parties to ensure that the potential impacts of the tests and subsequent spring rise are understood as clearly and as soon as possible.

Other - 62

Sincerely,

ARTHUR CLINCH
Director

c: Bill Miller
Larry Cieslak

PECK0004

PO Box 276
106 10th Street
Circle, MT 59215-0276

Other 220

McCONE CONSERVATION DISTRICT

LOWER MISSOURI RIVER COORDINATED RESOURCES

MANAGEMENT COUNCIL

September 25, 2000

Jamie R. Clark, Director
U. S. Fish and Wildlife Service
1849 C St., NW
Mail Stop 3012
Washington, D.C. 20240

Dear Ms. Clark:

In the spirit of compromise and willingness to help recover the Missouri River Basin's threatened and endangered species, Montana offered to consider allowing some experimental flow releases out of Fort Peck Dam. We did this through the Missouri River Basin Association planning process, and we did this on the assumption that we, the affected landowners, would be consulted every step of the way.

Suddenly, we see the U.S. Fish and Wildlife Service in its Biological Opinion is recommending a Fort Peck spring rise:

- Much bigger than the one we had agreed to,
- At a huge cost to hydropower revenue production,
- With no provision to gather baseline information that would determine if the spring rise will produce its intended biological success,
- With no suggestion of mitigating the rises' impacts on affected state and tribal landowners, and
- Without consulting at all with the affected state and tribal landowners.

We understand that the Service sees its role as protecting species rather than humans. However, your failure to consult with any of the people affected by your recommendations is bad government. In addition, it hurts your chance of success because we will likely now oppose the changes you suggest.

It is not too late to negotiate a solution to the Fort Peck Spring rise issue that will be good for the species and the landowners. However, in order to do so, we request that you personally visit our area and discuss the matter with us.

PECK0005 ang 11/27/00

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Other 82,83 ErSd 5

Becky L.

MARC RACICOT, GOVERNOR

1625 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

November 17, 2000

Ms. Becky Latka
Corps of Engineers, Omaha District
ATTN: CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

Dear Ms. Latka:

The Montana Department of Natural Resources and Conservation offers the following comments as part of the scoping process for the environmental assessment of the Fort Peck flow modification "mini-test" scheduled for May and June of 2001.

Not surprisingly, the alteration of releases from Fort Peck as planned in the proposed tests and subsequent implemenation of a spring rise causes much concern among those likely to be impacted by such a proposal. We urge you to continue to work closely with those parties to ensure that the potential impacts of the tests and subsequent spring rise are understood as clearly and as soon as possible. Local concerns which need to be addressed in the environmental assessment include: Impacts to irrigation pump sites, municipal water intakes, and historical and cultural sites caused by high flows and debris; The potential for flooding; and The impact on new irrigation projects and economic development efforts in the region. In order to prepare for the change in flows, it will be essential that the corps provide as accurately as possible estimates of anticipated river stages and velocities associated with various flow levels and identify river reaches likely to be impacted. Also, in the interest of public safety, we strongly encourage the corps to communicate plans for flow modifications sufficiently to warn the public of changes in river conditions.

If it is not already included, we request that a measure of erosion be included in the monitoring program. Such a measure would provide an indication of the impact of spring flows on river conditions as well as on land use adjacent to the river. It is important that the measures for the monitoring program be included as early as possible so that baseline conditions can be established.

We realize that these concerns apply more to flows higher than those anticipated for the mini-test. We believe, however, that the levels of concern are a matter of degree and remain relevant to the mini-test. We appreciate the spirit of cooperation displayed by the corps in engaging the

The Corps of Engineers is holding Missouri River Annual Operating Plan meetings in the following locations:

Glasgow, MT on Tues., October 3rd, at the Cottonwood Inn from 7 - 9 p.m.
Culbertson, MT on Wed., October 4th, at the First Community Bank from 12:30 - 2:30 p.m.
Wolf Point, MT on Wed., October 4th, at the Sherman Motor Inn from 7 - 9 p.m.

Please take the opportunity to come to these meetings so that we may discuss the Fort Peck spring rise issue with you. Again, we agree with your mission of recovering the basin's species. However, we are left with no choice but to oppose the Service if it continues to ignore our legitimate questions and concerns about the flow adjustments.

We thank you for your consideration, and we look forward to seeing you in October.

Sincerely,

Greg Rauschendorfer
Chairman
Lower Missouri River Coordinated Resource Management Council

Cc: BG Carl A. Strock

CRM COUNCIL MEMBERS: BOONE A. WHITMER - GEORGE BUDAK - LARRY MIRES
C:\WINDOWS\TEMP\Contemporary LetteR-CRM.doc

interested parties along the river to identify issues of concern. We believe such efforts bode well for the effective and responsive implementation of the flow modification tests.

Sincerely,

ARTHUR CLINCH
Director

c: Bill Miller
Larry Cieslak
Tim Bryggman, DNRC

PECK0006

Office of the State Engineer

November 9, 2000

Becky Latka
CENWO-PM-AE
215 N 17th Street
Omaha, NE 68102

Dear Becky:

Thank you for the opportunity to comment on the proposed spring rise tests out of Fort Peck Reservoir. I support the tests, but request several important items be monitored before and during the tests.

First, there needs to be adequate water in Fort Peck Reservoir before the tests can be justified. With the drought conditions and low reservoir levels the upper basin states are currently facing, it is recommended the tests be postponed if system storage doesn't increase from March 15 to May 1 or if inflows are not predicted to exceed median flows. If low water levels in Fort Peck preclude doing the mini-test in 2001, the full test should be postponed until the year after adequate water is available to complete the mini-test. Hydro-19

The other area of concern is downstream flooding. A large percentage of the bottom lands above Lake Sakakawea in North Dakota are used to irrigate high-value crops. Flooding of these crop lands would be very detrimental to both the landowner and the local communities. Therefore, special precautions should be taken to insure against such flooding. This will require monitoring the level of Lake Sakakawea, the flows from the Yellowstone River, and the total flows (not just the reservoir releases) on the Missouri River. I support the process of slowly increasing the releases until full test flow is reached as a means to insure against downstream flooding. While the mini-test poses less risk of flooding than the full test, it will still require monitoring to insure against flooding and to provide data to help in estimating the flows possible for the full test. We are working with area landowners to provide additional information and flows that will not cause flooding in our comments for the full test. Also, I ask that this office be kept fully informed as the tests are conducted. Hydro-20 Hydro-23

Finally, I applaud the Corps for holding the informational meetings, but am disappointed the comment deadlines were not included in the original correspondence regarding the tests. People interested in commenting on the spring rise test, but who were unable to attend one of the meetings, have no way of knowing when the comment deadlines are unless they obtained a copy of the comment sheets from a friend or neighbor.

Thank you again for the chance to comment on such an important undertaking.

Sincerely,

David A. Sprynczynatyk
State Engineer

DAS:JP/1392
Enclosure

PECK0007 emcj 11/20/00
Becky L

MRNRC
MISSOURI RIVER
NATURAL RESOURCES
COMMITTEE

1434 316th Lane • Missouri Valley, Iowa 51555 • 712-642-4121 • Fax 712-642-2460

November 13, 2000

Ms. Becky Latka
CENWO-PM-AE
Omaha District, U.S. Army Corps of Engineers
215 North 17th Street
Omaha, NE 68102

Dear Ms. Latka:

I am writing in response to the Corps of Engineers' October 30, 2000 news release extending the public comment period for the Fort Peck Flow Modification "mini-test" and full test scheduled for 2001 and 2002.

The MRNRC and its technical sections strongly support these preliminary tests as we view them as initial steps in adaptive management of the river. This support is reflected in specific Annual Operating Plan (AOP) recommendations for modified Fort Peck releases that we have provided to the Corps since 1997.

Both the mini-test and full test should be timed properly and be dependent on storage conditions in the reservoirs and projected basin runoff. We are convinced that both tests can be accomplished without negatively impacting reservoir levels in either Fort Peck Lake or Lake Sakakawea or causing downstream flooding problems. Please refer to our September 1, 2000, and September 21, 2000, letters to Colonel Meuleners, Missouri River Region Deputy Commander, for guidance concerning the timing of the tests, maintenance of reservoir levels during fish spawning, and the circumstances under which unbalancing of reservoir storage should occur. I am also enclosing a copy of an August 24, 1999, letter from the North Dakota Game and Fish Department to the North Dakota State Water Commission which provides guidance for avoiding flooding problems below the confluence of the Yellowstone River. Fish 13

The news release states that both tests will occur between May 1 and July 1. As noted in the above letters, releases should occur in June at the earliest as this is when reservoir surface water temperatures will be within the range to do the most good and also when native fish in the river will be spawning. June releases also would avoid lowering of Fort Peck reservoir levels during reservoir fish spawning which occurs in April and May and because inflows into the reservoir from snowpack runoff are normally highest in June. We also reemphasize the need to extend spillway releases during the full test out to August 20 to provide adequate water temperatures for incubation and development of recently spawned native fish in the river. This means that once the higher June flow is suspended on July 1, normal releases during the rest of the summer also must have a spillway component--otherwise you may see no recruitment of fish (survival after being hatched) even though spawning occurred during the rise. Fish 13

I appreciate the opportunity to comment. Please contact me at 712-336-1714 if you have any questions. The MRNRC and our technical sections are available to assist with planning for the tests, including development of monitoring plans.

Sincerely,

Tom Gengerke
MRNRC Chair
Iowa Department of Natural Resources

Enclosure

MRNRC Delegates
MRNRC Ex-Officio Members and
Cooperating Agencies
MRNRC Technical Section Chairs
MRBA Executive Director
FWS Missouri River Coordinator (Olson)

NORTH DAKOTA
GAME & FISH
DEPARTMENT
"Variety in Hunting and Fishing"

GOVERNOR, Edward T. Schafer
DIRECTOR, Dean C. Hildebrand
DEPUTY, Roger Rostvet
100 North Bismarck Expressway
Bismarck, North Dakota 58501-5095
Phone: (701) 328-6300
FAX: (701) 328-6352

August 24, 1999

Dave Sprynczynatyk
ND State Water Commission
Bismarck, ND 58501

Dear Dave:

One component of a potential Missouri River Water Control Master Manual alternative is to provide additional (warm-water) releases in late spring-early summer from Ft. Peck Dam. Missouri River Basin Association (MRBA) has discussed this matter and has(is) considered(ing) it *as the one* flow recommendation that deals, to some degree, with endangered, native fish species. I would like to provide you with my departments position on this issue so that you will have a full understanding on the need (from our perspective) for the Ft. Peck releases. The Ft. Peck reach has been emphasized because of its restoration potential for warm-water native fish and limitations in other remaining unchannelized segments.

The natural hydrograph has been a 'buzz term' in recent years in terms of reclaiming some of the pre-impoundment and required conditions for numerous native fish species. We understand fully that though most if not all of us would like to assist in the full recovery of these species to pre-impoundment levels, societal needs will forever prevent this from occurring. However, we believe there are some small steps that could be taken (and evaluated) which may enhance the existing populations and hopefully prevent them (e.g. sicklefin and sturgeon chubs) from becoming another federally listed species.

Within North Dakota these small steps would include maintaining the Yellowstone River (including its shoreline and current flow regime) in its present condition and supporting a genuine attempt to modify Ft. Peck releases. Since the intent of this letter is to provide you with additional information for a new Master Manual alternative, the remaining comments will focus on Ft Peck releases.

The objectives of a spring Ft. Peck release are to 1) provide the hydrological cue for native fish to spawn and maintain the needed flows for fish to rear, 2) provide the temperature cue for native fish to spawn and maintain temperatures for fish to rear and grow, and to a lesser degree 3) reconfigure the river (but within its banks) so to create new sandbars, etc. Since the benefits from these objectives are only conceptual at this point, we fully support tagging the Ft Peck release scenario as experimental. However, it is absolutely imperative that if this operational component is any part of an adopted alternative, it must be implemented in a manner that ensures its best chance for success - anything less will only be a cosmetic attempt to deal with some complex environmental issues.

The attached recommendations, developed by the Missouri River Natural Resources Committee (MRNRC), are based on the best scientific information available to biological staff in North Dakota and Montana, many whom work this stretch of the Missouri River routinely. In addition to these recommendations, my Department strongly supports and/or reinforces the three following points:

Fish 22

Sprynczynatyk Letter Cont.
Page 2

- Since many of the species intended to benefit from modifications to Ft. Peck releases are long-lived (e.g. sturgeon, paddlefish, sauger, etc), the time frame to gauge success or failure must be of longer duration. This is especially true given the climatic and hydrologic variability within the Missouri River Basin. Biological staff recommends and I concur the experimental release period must be for a minimum of a ten year period.

- During projected upper decile runoff years, the proposed (see MRNRC recommendations) 38 kcfs one-day release from Ft. Peck would be reduced if the Yellowstone River flow (Sidney gauge) is more than 60 kcfs. Likewise, the proposed 24 kcfs 30-day release from Ft. Peck would be reduced until the Yellowstone flow dropped below 70 kcfs. This is based on our desire not to surpass the mid-June 1997 inflow (from the two rivers) into Lake Sakakawea of approximately 100 kcfs.

- Erosion has been a concern for landowners bordering the Missouri River. Proposed higher flows from Ft. Peck have already raised the ire of some landowners and apparently the cry for more bank stabilization. Again, instead of bank stabilization we would like your office to promote the merits of long-term sloughing or conservation easements. This is extremely important for all of the Missouri above Williston as well as the Yellowstone rivers. Unquestionably, maintaining this area is critical for rare species in North Dakota and deserves special attention. Bank stabilization efforts in this area will only reduce the habitat needed for various native fish species as well as least terns and piping plovers. At the same time, we're not opposed to protection of infrastructure but this must be done on a case by case basis with an overwhelming economic justification; otherwise, sloughing/conservation easements offer the protection the natural resources deserve while providing impacted landowners with monetary reimbursement.

We do have a serious concern if the recommendations are not implemented correctly: the increase flows in early May at the confluence of the Missouri-Yellowstone rivers, caused by the increase in Ft. Peck releases, will move paddlefish (a regionally popular recreational fishery) up the Missouri (versus the mid-May-June spawning movements up the Yellowstone) where reproduction would be prohibited if - a) releases are cut back, or b) water temperatures are too cold. In either case, the resource would be worse off than "doing nothing".

Again, Dave, I hope you and other MRBA members implement the Ft Peck releases. However, if the releases are not done right than the resource would be better served if not done at all.

Also, openness to change based on new data and ongoing input (adaptive management) will be critical for a new Water Control Plan to work and must be the foundation of any new alternative. Your efforts with other basin states have set the stage for some potential change. Communication, understanding, and acceptance of all interests, including fish and wildlife concerns, will only build a stronger foundation. As always, please don't hesitate to call if you have any questions.

Fish 22 (con't)

Respectfully,

Dean Hildebrand
Director, ND Game and Fish Department

c.f. Richard Opper, MRBA
Mike LeValley, MRNRC ✓
Pat Graham, MTFWP
Bud Clinch, MTNRC

Sprynczynatyk Letter Cont.
Page 3

Releases from Fort Peck Dam (as adopted in large part by MRNRC)

1) Initiate increased flows from the dam for a 30-day period when the lake surface water temperature reaches 18 degrees C. Flow shall be adjusted between powerhouse and spillway releases to attain a target river temperature of 18 degrees C at the Wolf Point, Montana gage. This temperature is based on a one-year river temperature study of the Montana Fish, Wildlife, and Parks Department. The purpose of the increased flows and temperature modification is to initiate spawning by native fishes including pallid sturgeon, sicklefin chub, sturgeon chub, blue sucker, paddlefish, flathead chub, sauger, and other species.

Fish 22 (con't)

--Upper Quartile runoff: adjust dam and spillway releases to achieve an average flow of 24,000 cubic-feet-per-second (cfs) at the Wolf Point, Montana United States Geological Survey stream gage with a one-day peak flow of 38,000 cfs attained during the second week of the 30-day period.

--Lower Quartile-Upper Quartile runoff: adjust dam releases to achieve an average flow of 18,000 cfs at the Wolf Point, Montana stream gage with a one-day peak flow of 27,500 cfs attained during the second week of the 30-day period.

--Below Lower Quartile runoff: adjust dam releases to achieve a target flow of 11,500 cfs at the Wolf Point, Montana stream gage between May 11 and June 30. This flow is necessary to maintain suitable spawning and incubation habitat for sauger and other native fish species. The remainder of the year a flow of at least 7,000 cfs should be provided at the Wolf Point gage for maintenance of riffles and fish rearing pools.

2) Adjust releases from the powerhouse and spillway through August 20 to ensure suitable water temperatures (at least 18 degrees C at the Wolf Point, Montana gage) for development and survival of native riverine fish eggs, fry, and juveniles. Preliminary data collected by the Montana Fish, Wildlife, and Parks Department indicate that at least 25 % of the discharge should be through the spillway to attain suitable downstream water temperatures.

3) Monitor streambank erosion in downstream reaches prior to, during, and after the test releases to determine whether the higher releases impact bank stability. In the event that impacts can be demonstrated, sloughing or conservation easements should be obtained from affected landowners to compensate for any impacts in lieu of bank stabilization. Because of its detrimental impacts to channel morphology and aquatic habitat, bank stabilization should not be undertaken except where needed to protect critical public infrastructure.

PECK0010

DPRW
Dry Prairie Rural Water
Roosevelt ~ Sheridan ~ Daniels ~ Valley
212 Broadway- Box 517 ~ Culbertson, MT 59218
Phone 406-787-5382 ~ Fax 406-787-5392

To: Becky Latka

From: Clint Jacobs

Subject: Comments on Flow Modifications

Dear Becky,

Following are comments by Dry Prairie Rural Water regarding the Fort Peck Flow Modifications as we discussed.
Please feel free to contact me if you have need of clarification.

Clint Jacobs, Coordinator
Dry Prairie Rural Water
P.O. Box 517
Culbertson, MT 59218

Ph: 406-787-5382

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 Dry Prairie Rural Water Authority in northeastern Montana. .

Dry Prairie Rural Water Authority and the Assiniboine and Sioux Tribes 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 Dry Prairie with a plan for protection of the intake site, including related facilities in the flood plain 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 through funds available from the Corps of Engineers or federal entities other than the entity established for the operation, maintenance and replacement of the Fort Peck Reservation Rural Water System.

ErSd 22

The Corps of Engineers must also provide Dry Prairie 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.

Please provide a time frame for response to our request for consultation and coordination. Dry Prairie is willing to correspond and/or meet with representatives of the Corps of Engineers at any time to clarify our concerns and requests.

Sincerely,

Rick Knick

Rick Knick, Chairman
Dry Prairie Rural Water Authority

cc The Honorable Conrad Burns
The Honorable Max Baucus
The Honorable Dennis Rehberg
The Honorable Marc Racicot

Colonel Joseph Westphal
Secretary Bruce Babbitt
Clint Jacobs
Tom Escarcega

PECK0011

United States Department of Agriculture | **Natural Resources Conservation Service** | **Eastern Plains Resource Conservation and Development** | **123 West Main Sidney, MT 59270 406-433-5024**

October 18, 2000

Ms. Becky Latka
Corps of Engineers, Omaha District
ATTN: CENWO-PM-AE
215 N. 17th Street
Omaha, NE 68102

Dear Sirs:

The purpose of this letter is to comment on the 2001 Fort Peck Dam flow modification "mini-test" and "full-test" in 2002. These tests will release increased amounts of water from Fort Peck Dam.

I would like to express concern and reservations about negative impacts this action will have to the environment and agricultural interests below Fort Peck Dam to the confluence with the Yellowstone River near Williston, North Dakota.

The Missouri River below Fort Peck Dam already has severe bank erosion problems, and these high releases will cause more accelerated bank erosion and loss of valuable agricultural land. The increased flows will harm pump sites of individual farmers who have had a terrible time over the years keeping them stabilized. It is expensive to move pump sites. How many agricultural pump sites and town inlets will be affected and to what degree? Lower fields adjacent to the river could be flooded, causing loss of crops. How many acres will be affected and what will the farmers' losses be? — ErSd 5

High flows will move a lot of sediment down the river to the confluence area. There already is a big problem of silt deposition where the Missouri River slows to enter the west end of Lake Sakakawea. More sediment is not needed here. Does the Corps intend to dredge in this area in the future to keep the channel open? — ErSd 5

There are many questions to this projects' effect on existing fish species below Fort Peck Dam. How will it affect the trout population below Fort Peck Dam? Are pallid sturgeon going extinct naturally through evolution and natural processes and not because of man-caused activities? Their close relative, the shovelnose sturgeon, is healthy and plentiful in both the Lower Yellowstone and Missouri Rivers. — Fish 23

I have lived in Glendive, Montana, most of my life and have extensive experience in conservation uses and environmental aspects on the Lower Yellowstone River. Is the Missouri River below Fort Peck Dam to be managed to mimic the natural processes of the free-flowing Yellowstone River? Clearly, the nearby Yellowstone River should be a good enough example for scientific studies without having to do this water release project on the Missouri River. — Other - 63

Lastly, I am concerned about the cost to the taxpayers of this project. What is the value of the hydropower lost due to spillway flow release? This country is running short of electricity with the cost of power increasing. Western Montana has had low snow pack and runoff now for years in the Upper Missouri River basin. The planned high releases in this project may result in a lower water level in Fort Peck dam affecting both power generation and recreation users in Fort Peck Lake. — HPower 29 — Rec - 2

Thank you for considering my comments.

Sincerely,

Mike Carlson

Mike Carlson, Coordinator

cc: Richland County Conservation District
Roosevelt County Conservation District

PECK0012

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Rocky Mountain Regional Office
316 North 26th St.
Billings, Montana 59101

17 OCT 2000

IN REPLY REFER TO:
Water Resources
Code 430

Becky Latka
Corps of Engineers, Omaha District
Attention: CENWO-PM-AE
215 N. 17th Street
Omaha, Nebraska 68102

Dear Ms. Latka

We are responding to your September 12, 2000 , letter regarding the U.S. Army Corps of Engineers, Omaha District (Corps), proposal to conduct spillway discharge tests during May and June of 2001 and 2002. The Fort Peck Irrigation Project, operated by the Bureau of Indian Affairs, consists of two irrigation units located on the Southwestern boundary of the Fort Peck Reservation along the Milk and Missouri Rivers. Both irrigation units are served by pumping plants along the Missouri River and would potentially be adversely impacted by your discharge tests.

Water pumped from the Missouri River is the primary sources of supply for the Wiota and Frazer-Wolf Point Units. The Wiota Unit pumping plant is located approximately 8 miles below the confluence of the Milk and Missouri Rivers, while the Frazer-Wolf Point Unit pumping plant is located approximately 16 miles southwest of Wolf Point near the town of Frazer, Montana. ErSd 22

Historically, issues with sediment scour and deposition have created special maintenance problems at these pumping facilities. This is under the historic operations of Fort Peck Dam. Under your proposal, there will be extended periods of increased flows which will increase the potential for damaging erosion and/or sediment deposition at our two pumping plants.

Please address the potential impacts to our facilities from your proposed flood release discharges "tests." The Fort Peck Irrigation Project operates on a very strict budget and limited operation and maintenance (O&M) funds that are paid by the landowners and water users. If the proposed "tests" result in damages to the Fort Peck Irrigation Project facilities, who will be responsible for the costs to repair or complete special maintenance on the facilities? Other - 64

Responses and questions can be directed to Travis Teegarden, Branch of Water Resources, at the address on the letterhead above. Mr. Teegarden can be reached by telephone at (406) 247-7998.

Sincerely,

Keith T. Seward

Regional Director

cc: Superintendent, Fort Peck Agency
Laurence Garfield, Fort Peck Irrigation
Ross Mooney, OTR, Irrigation and Power

PECK0013

POST OFFICE BOX 1306
WILLISTON, NORTH DAKOTA 58802-1306
PHONE (701) 572-8161
FAX (701) 572-8880
TDD (800) 366-6888
(State Relay)

CITY OF **Williston** NORTH DAKOTA

October 25, 2000

Ms. Becky Latka
CENWO-PM-AE
215 North 17th Street
Omaha, NE 68102

RE: Proposed Fort Peck Mini-Test

Dear Ms. Latka:

The Corps of Engineers programming of extra water releases from the Fort Peck Reservoir causes some concern for the City of Williston. Our concerns are as follows:

All high flow conditions on the Missouri River create additional water treatment problems at our treatment plant due to the increased turbidity. Our plant already experiences seasonal problems to meet increasingly tighter federal turbidity requirements due to natural high flow conditions. To artificially create this problem is our concern. ErSd 25

Since we are at the end of the Garrison Dam, the large silt accumulation has created a delta system that causes a vector control problem with high flow inundating this area next to Williston. This result is a considerable amount of local resources needed to combat. Other - 65

A constant concern of ours with the high flow conditions, especially for an extended period of time, is that the ground water condition in the low areas adjacent to the Corps protective levy for Williston become increasingly higher. We have our sole source of water for the City of Williston run through a 30" transmission pipeline in this area. If repair was necessary on this pipeline during this period, it would be virtually impossible to accomplish before our reservoir capacity was dry for our residents. ErSd 22

These are our major areas of concern and we are sure that there are other minor issues for the city, as well as other major issues for other entities in our area. With this in mind, would it not be appropriate that an environmental impact study of this programmed high release be completed prior to this action?

Thank you for your consideration to our concerns.

Sincerely,

E. Ward Koeser
President, Board of City Commissioners

EWK:jb

PECK0014

County of Roosevelt

Commissioners:
Dean Harmon, Chairman
Ferris Toavs, Member
Gary Macdonald, Member

Beverly Evans, Secretary

400 2nd Avenue South
Wolf Point, Mt 59201
406-653-6246
FAX
406-653-6201
E-mail: rooscord@nemontel.net

Office of County Commissioners

October 23, 2000

US Army Engineer District, Omaha
Corps of Engineers
ATTN: Becky Latka
215 North 17th ST
Omaha, Nebraska, 68102-9959

Dear Ms Latka:

The Fort Peck Dam was constructed for two primary reasons. The first was flood control and the second was to produce hydro-electric power. Subsequent additional benefits have been the orderly development of irrigation due to stable in-stream flows and an increasing reliance on domestic consumption of Missouri River water.

The current "flushing" proposals would lead to the following adverse effects in addition to contradicting the original intent for constructing the dam.

1. Stream bank erosion. Stream banks are the most vulnerable to erosion when the frost has come out of the ground and before any vegetative protection is established in the Spring. ErSd 22
2. When the stream banks erode along the Missouri some of the few trees left near waters edge fall in to the water which further depletes our wooded area. WRH 9
3. A significant increase in flow volume agitates stream banks and results in more soil being eroded and subsequently carried by the water. This results in greater costs to clean the water for domestic consumption. This further increases costs for irrigation by adding soil to the water which wears pump impellers, sprinkler pipes, nozzles and deposits soil in irrigation canals and ditches. In ErSd 22

addition, increased sediment carried down stream in the Missouri hastens the "filling" of the upper portion of Lake Sakakawea.

4. Irrigators have invested much in labor and money along the Missouri and continually struggle to maintain stable pumping stations under the best of circumstances. An unstable flow would destroy some stations and damage others. An unstable diversion point would cause significant economic loses as a result of farmers being unable to irrigate in a timely manner. ErSd 22
5. By releasing excess water from the Fort Peck Dam it would reduce the storage of available water to reliably serve our towns, farmers and recreationists during dry years. Hydro-f1

For all of these reasons the Roosevelt County Commissioners are urging restraint in the proposed "flushing" process.

BOARD OF COUNTY COMMISSIONERS
ROOSEVELT COUNTY, MONTANA

Chairman

Member

Member

Cc: Senator Burns
Senator Baucus
Governor Racicot
DNRC

PECK0015

10-3-00

Ms. Becky Latka
U.S. Army Corps of Engineers
ATTN CENWO-PM-AE
215 N. 17th ST.
Omaha, Nebraska 68102

Dear Ms. Latka,

after reading this proposed "mini test" for 2001, and the "full test" in 2002, I must protest this proposal. My pumpsite along with two other pumpsites of my neighbors, are directly in front of the spillway. I have seen what heavy discharges from the spillway can do to the opposit side of the river bank, where these 3 pumpsites are. ErSd 28

I fear that harm could come to our pumps and/or even could be washed out completely.

This proposed test comes at a bad time of the year. Our pumps must be ready to operate during May and June. We must be able to put water on our crops at this time or our crops will suffer. Other 82

We think who ever opens the spillway gates or the U.S. Fish and Wildlife Service should be responsable for our pumps and our Crops.

If those Fish and those bird have survived the army Corps management of this river for some 60 years We Can't see that they are to be blamed for these Endangered Species.

Sincerely,

Edgar Garwood
HC 81 Box 212
Wadena, Montana 59248

FORT PECK TRIBES

Assiniboine & Sioux

PECK0016 Becky L.

March 19, 2001

Ms. Becky Latka
CENWO-PM-AE
215 North 17th Street
Omaha, NE 68102

Entire Letter
Other 334

RE: Fort Peck Mini and Full Tests and Future Operations

Dear Ms. Latka:

Please refer to our previous correspondence on this subject dated November 19, 2000. The Tribes continue to correspond with you to ensure preservation and protection of our valuable Missouri River and its valley between river miles 1621 and 1762, a distance of 141 miles (with minor exception) along the River on the south boundary of the Fort Peck Indian Reservation.

The Fort Peck Assiniboine and Sioux Tribes appreciated the initiative of the Corps of Engineers to visit the Tribal Council on February 16, 2001, and present plans for the Fort Peck Mini Test and future operations of Fort Peck Dam. The Tribes further appreciated the Government-to-Government consultation provided by the Corps of Engineers consistent with Executive Order 13175 and the decision by the Corps of Engineers to refrain from testing or further changes in the operation of Fort Peck Dam until our concerns are fully addressed and plans, acceptable to the Fort Peck Tribes, are developed. Until acceptable plans are implemented, the Tribes oppose the testing and any change in future operations to accommodate a spring rise.

Bill Miller, Mike George and other Corps staff were highly courteous and made meaningful presentations to the Tribal Council respecting the proposed mini and full tests and the future spring rise. We regarded the meeting as a good first step in consultation. Our November 19, 2000, letter requesting plans from the Corps to accommodate a variety of issues was not addressed by Corps of Engineers staff during the February 16 meeting, nor was a response expected that quickly. However, the Tribes continue to expect specific plans from the Corps of Engineers with regard to the following:

- Plan for protection of our regional MRI intake site and related facilities in the floodplain (PL 106-382), including a plan for repair and/or replacement of those facilities if damaged by future operations connected with a spring rise or otherwise;
- Plan for funding additional water treatment plant costs associated with enhanced levels of suspended solids caused by the spring rise;
- Plan for protection, mitigation, replacement and associated financing of existing intake sites along the Missouri River within the Fort Peck Indian Reservation for the Fort Peck Irrigation Project, other private intakes and newly proposed intakes;

Poplar, Montana 59255 P.O. Box 1027 (406) 768-5155

- Analysis of the impact of future operations on erosion of the north bank, including maps (GIS) of the Missouri River Valley outlining soil types, geologic anomalies and other factors relevant to erosion;
- Plan for compensating landowners for erosion;
- Plan for safety during testing and future operations, including assessment of the spillway to perform properly;
- Plan for protection of human remains, cultural, historical and archaeological resources;
- Plan for baseline measurements and future monitoring of resources including water quality, total sediments, aquatic habitat, riparian habitat and other resources;
- Analysis and presentation of benefits of spring rise to Fort Peck Assiniboine and Sioux Tribes.

We asked for a timeframe for response to our request for consultation and coordination and expressed our willingness to meet with the Corps of Engineers at any time.

Since the February 16, 2001, meeting, there has been progress on a contractual relationship between the Tribes and the Corps of Engineers to inventory cultural resources along the Missouri River Valley. Because more time (an additional year) is available before the mini and full tests, the Tribes have determined that it would be appropriate to undertake more responsibility for the collection of baseline information related to riparian habitat, namely the cottonwood forest zone within the Reservation. Corps of Engineers staff member Mike George was clear during our meeting that a program for restoration and regeneration in this ecological zone is needed, and such an effort would be supported by the Corps. Therefore, prior to our next meeting (April 16, 2001), we are hopeful that a scope of work can be developed for the Tribes to implement that will, among other things, inventory the soils, plant life and other resources associated with this ecological zone which has considerable cultural and traditional value to the Assiniboine and Sioux Tribes and value to the general ecological health of this segment of the valley.

Mr. Miller also referred to the development of a monitoring plan in conjunction with the U.S. Geological Survey. While the subjects to be included in the monitoring plan were not discussed in detail, the Tribes expressed their interest in participating with the Corps and USGS in the development of that monitoring plan. We are hopeful that you can correspond with us to accomplish this objective. (You may also wish to review our "needs assessment" that was furnished pursuant to section 203 of WRDA 2000).

PECK0017

FORT PECK TRIBES
Assiniboine & Sioux

November 20, 2000

Entire Letter
Other 334

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,

Poplar, Montana 59255 P.O. Box 1027 (406) 768-5155

Total sediment discharge and analysis is one of the areas of monitoring that was discussed at the meeting and has been the subject of correspondence from the Tribes' consultant to Mr. Miller since the meeting. This part of the monitoring program will provide additional insight into the movement of sediment in the Missouri River below the Dam and identify with more detail the areas of erosion and deposition to be expected with future operations at Fort Peck Dam to produce a spring rise.

The Tribes would appreciate correspondence from you outlining the steps you are taking to address our concerns and to move forward to implement the plans and analyses requested by the Tribes.

Sincerely,

Ray K. Eder, Vice- Chairman
Fort Peck Assiniboine and Sioux Tribes

cc Mr. Bill Miller
Ms. Rose Hargrove
The Honorable Max Baucus
The Honorable Conrad Burns
The Honorable Dennis Rehberg
Tribal Council Members
Mr. Tom Escarcega
Ms. Mary Pavel
Mr. Mike Watson

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 through funds available from the Corps of Engineers or federal entities other than the entity established 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 of 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, their lands and their resources of 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 future 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 Pick-Sloan and, more specifically, on the resource pool from which the Fort Peck Assiniboine and Sioux Tribes will receive federal power at preference 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 banks, 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,

Arlyn Headdress, Chairman
Fort Peck Assiniboine and Sioux Tribes

cc The Honorable Conrad Burns
The Honorable Max Baucus
The Honorable Dennis Rehberg
The Honorable Marc Racicot
Colonel Joseph Westphal
Secretary Bruce Babbitt
Rick Knick

KENT CONRAD
NORTH DAKOTA
202-224-2043

PECK0018

United States Senate

WASHINGTON, DC 20510-3403

December 11, 2000

Colonel Mark E. Tillotson
Omaha District
215 North 17th Street
Omaha, NE 68102-4978

Dear Colonel Tillotson:

As you know, next summer's scheduled test discharges from the Fort Peck Dam may affect residents of the Missouri River basin in Montana and North Dakota. Several constituents have shared their concerns regarding these releases with me. Enclosed is a letter from Shirley Hardy expressing her concerns regarding the proposed tests. I urge you to respond to her specific concerns at the following address:

Shirley Hardy
RR 1, Box 1740
Fairview, MT 59221-9709

Thank you for your consideration of this issue.

Sincerely,

KENT CONRAD
United States Senate

KC:wjrd
Enclosure

QUESTIONS CONSERNING FLOODING AND DRY UP THE MISSOURI RIVER BELOW FORT PECK DAM.

- How many cubic feet per second will be allowed down the Missouri River after the flood so we can irrigate? Hydro-24
- How much money is dedicated to the riverbank erosion of private property along the river? Other 83
- How much money will be allocated to landowners for crop damage? Other 83
- How much money will be put aside for pump site damage? Other 83
- Please show in detail how private property owners below Ft. Peck Dam can prove damage without costing a fortune and be compensated in as fast a time frame as it did to do the damage. HPower 8
- Will we be guaranteed electricity each year? WS 17
- Will we always be guaranteed irrigation water? Legal 81
- Why doesn't the Corp of Engineers have to obey Montana Stream Bank Preservation Act of 1975? Other 223
- Where did this idea originate and what does each test cost? Other 82
- Don't irrigators below the dam have the same interest as barge owners? Hydro-11
- How do you flood the Missouri River and waste water a month every year and keep water in Montana? Other 224
- Montana was declared a disaster area this summer from drought, this fall for loss of electricity-now we will have a permanent disaster when the Missouri River is flooded. At what point would we have our water cut off entirely for an endangered species? Other 82
- Is man creating another disaster area?
- It is criminal to waste water in dry Eastern Montana with a man made flood!

Shirley Hardy

CONRAD BURNS
MONTANA

PECK0019

United States Senate

WASHINGTON, DC 20510-2603
(202) 224-2644

COMMITTEES:
APPROPRIATIONS
COMMERCE, SCIENCE, AND TRANSPORTATION
ENERGY AND NATURAL RESOURCES
SMALL BUSINESS
SPECIAL COMMITTEE ON AGING

December 6, 2000

Colonel Mark Tillotson, Commander
Army Corps of Engineers
Missouri River Division
12565 West Center Road
Omaha, NE 68144

Dear Colonel Tillotson:

I have been contacted by constituents who have several concerns about the Fort Peck Flow Modification Plan. (Plan) proposed by the Army Corps of Engineers (Corps). One of the major concerns is safety. According to what I have been told, there are concerns about the integrity of the 65-year-old spillway. What has been done to ensure that the spillway will hold under the increased flows? I was informed that the Omaha office of the Corps is the only one who has oversight to shut the spillway gates even in the event of an emergency. Is this true and if so, what plans are in place to ensure safety in the event of a problem? Hydro-25, 9,22

As you know, multiple use is a major concern about the Plan. My constituents would like to know what consideration has been given to the notification of downstream users including irrigators, about the flows. Is there a method in place to warn users of recreation sites and to ensure the monitoring of potential damage to the infrastructure below the dam? Hydro-10, 23

What security measures are in place to ensure safety if there is a major rainfall? The safety of those who live downstream needs to be ensured if there is a great deal of rain on any of the tributaries to the Missouri. Hydro-20

I have been asked if the Corps could provide models that would relate to the river levels or stages during the implementation of the Plan. My constituents would also like to know if these models could be made specific to landowner requests. Hydro-21

Another concern that has been expressed is regarding downstream damages. Large investments have been made by landowners and municipalities based on average stream flows for May and June over the course of the last 25 years. The increased flow of the Plan will make these diversion sites inoperable. Does the Corps have any plan to mitigate the costs that will be incurred by the loss of the ability to use these diversion sites? Does the Corps have the ability to assist in developing new sites that will be required? Other 82, 87

HELENA (406) 449-5401 · BILLINGS (406) 252-0550 · TOLL FREE 1-800-344-1513
http://burns.senate.gov

Erosion is already a problem that faces many landowners and a concern is that there will be increased erosion due to the Plan. It is my understanding that currently there is no baseline data to illustrate the rate of erosion. With increased flows, the concern is that the erosion will become even more significant. Is the Corps prepared to develop the data to determine the rate of erosion and to assist with bank stabilization? ErSd 24

I believe the proposed Plans are based on the Draft Biological Opinion prepared by the United States Fish and Wildlife Service for recovery of the pallid sturgeon. Has any other scientific material been reviewed to determine if this Plan will actually benefit the recovery of the pallid sturgeon? EnSp 4

My constituents would like to what the costs will be for this Plan including loss of power generation, downstream damages, and other related costs. Also, what is being done to protect downstream historic and cultural sites? HPower 29 CR 1

You may direct your correspondence to my office at:

Senator Conrad Burns
Attention: Pamela Tierney-Crisafulli
324 West Towne
Glendive, Montana 59330
(406) 365-2391 phone
(406) 365-8836 fax
pam_tierney-crisafulli@burns.senate.gov

Thank you, Colonel Tillotson, for your assistance in this important matter. Your services are always appreciated.

Sincerely,

Conrad Burns
United States Senator

CRB\ptc

PECK0021

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

EnSp 18

Dear Sirs:
I am very much against this test just to see if the pallid sturgeon
will do better with the warmer water temperature I believe the fluctuating
temperatures will be much harder on the fish that are presently in the river.
I believe the 25,000 CFS flows will do erosion and/or deposits of
sand on Edgar Garwoods pumpsite which I was during that test
the sand which will be stirred up in the river will also cause undo
wear to our intake pumps when we use them at that time which
is very critical to our irrigated wheat + alfalfa stands + yield.
My pumpsite which is located about 1½ miles above the spillway,
the 4000 CFS flow from the powerhouse isn't enough to irrigate from
my [illegible] present pump location at a very critical time for our
crops of wheat + alfalfa. Right now (Oct 20) there isn't enough
water to irrigate if I wanted to. I am very much against this
test. I feel there should have been some testing done when the
spilling was done in 1997 due to the lake getting to high. Sincerely

ErSd 28

WS 18

Ronald Garwood

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

✓ Add me to your mailing list

✓ Send me a copy of the draft EA

NAME: Ronald Garwood

ADDRESS: HC 81 Box 215
Nashua, MT 59248

PECK0022

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

I am very concerned that the public has not been informed as to the millions of dollars they will have to pay to make up for the lost generation of electricity because of this test. I assume that the EIS will include the realistic estimated costs of lost generation?

Hpower 29

I also am concerned about the considerable costs due to increased bank erosion because of these tests.

ErSd 22

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

X Add me to your mailing list

___ Send me a copy of the draft EA

NAME: Allen Thiessen

ADDRESS: Box 197
Lambert, MT 59243

PECK0023

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

Dear Sean

When it come the 25,000 cubic feet release, are you going to compare the erosion, destruction, pollution + all the games, duck's nest, bird nest in the islands and river bank's be destroyed, but hope we can keep the irigators, land owners, fish and the birds, all happy, let all work togeather for that goal.

EnSp 21

Truly - Jean Bidegaray
Box 401-
Brockton Mt. 59213

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

X Add me to your mailing list

___ Send me a copy of the draft EA

NAME: Jean Bidegaray

ADDRESS: Box 401-
Brockton, Mt. 59213-

PECK0024

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

My comments on this are the same as the other but more so. What happens when my pump sites silt in or wash out? Are you going to compensate me? The small family farm is the endangered species? Who is going to work for my lively hood as I ~~really~~ need irrigation water to survive. Why is erosin bad in western Mt. but ok in eastern Mt? This test will naturally cause a lot of damage to the ecology of everything along the way with erosin #1 ! The dam was constructed for flood control and irrigation not for testing by the Fish + Wildlife. I am not living in the past and I hope to live in the future ! Please keep me informed of developments.

ErSd 22

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

X Add me to your mailing list

X Send me a copy of the draft EA

NAME: David Anderson

ADDRESS: HC 81 Box 212
Nashua Mt 59248

PECK0025

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

The full test will put 10,000 acres of sugarbeets in jeopardy. Pump sites or beet fields will be flooded. Using an average yield and average sugar price, loss to growers will equal $8.8 million dollars. The loss to Holly Sugar will amount to over 2 million dollars. Our prime sugarbeet acreage is located along the Missouri River. We depend on this acreage. Low level flooding would actually ruin many fields for future crops. People's livlyhood depends on irrigation from the river. The timing of the test is a critical time for irrigating sugarbeets. The crop would not recover from the damage.

FC 29

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

X Add me to your mailing list

X Send me a copy of the draft EA

NAME: Russ Fullmer - Holly Sugar

ADDRESS: Box 1168
Sidney, MT 59270

PECK0026

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

THIS IS A MAJOR PROJECT THAT WILL AFFECT THOUSANDS OF PEOPLE AND COULD EASILY COST PRIVATE, STATE, & LOCAL ENTITIES MILLIONS OF DOLLARS. I DO NOT FEEL THE FW&P OR CORPS SHOULD CONSIDER A FULL TEST WITHOUT INVOLVING THE ~~LOCAL~~ LOCAL & STATE ENTITIES & RESOLVING THEIR CONCERNS BEFORE ATTEMPTING THIS PROJECT. IF THE YELLOWSTONE RIVER WAS IN FULL FLOW CONDITION AND THE MISSOURI RIVER WAS ALLOWED TO FLOW AT 25,000 CFS SERIOUS FLOODING WILL OCCUR BELOW THE CONFLUENCE RESULTING IN TREMENDOUS EROSION & WASHING OUT EXISTING PUMP SITES. WE PRESENTLY HAVE A ~~PUMP~~ PUMP AT THE BRIDGE SOUTH OF WILLISTON ALONG HIWAY 85 & SUPPLY WATER TO 85 HOME OWNERS. IF THIS SITE IS FLOODED BY THE COE OR FW&P WHO WILL COMPENSATE US FOR OUR LOST REVENUE? A $100,000,000.— BOND SHOULD BE IN PLACE & DAMAGES ASSESSED BEFORE THIS FULL TEST (EXPERIMENT) IS AUTHORIZED.

Hydro 9 ,36

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

___ Add me to your mailing list

/ Send me a copy of the draft EA

NAME: Mike Amos

ADDRESS: P.O. Box 1166
Williston ND 58801

Latka, Rebecca J NWO PECK0027

From: Don Iverson [bernt@midrivers.com]
Sent: Tuesday, October 31, 2000 11:30 PM
To: Latka, Rebecca J
Subject: Fort Peck Flow Modification Tests (Mini & Full)

Other 7, 82, 83

As a landowner on the Missouri river (miles 1631-1629 left), I have had to endure severe river bank erosion without an economically feasible cure. The Corps of Engineers Flow Modification Tests are the ultimate insult. Where are the negative effects mitigation proposals? Why are you proposing to plunder our most basic, irreplaceable, natural resource, our land, on a "might work", politically motivated, "three martini lunch" scheme? Why are the dictates and intentions of the Pick Sloan Act being totally ignored in these proposals? If society feels these kinds of things are necessary, I feel it should take responsibility for the negative, as well as, positive effects.
Please direct any remarks to:
Don Iversen
Box 383
Fairview, MT 59221
1-406-742-5665 or 3434

PECK0028

Other 82, 83

We have 1000 acres of irrigated ground south of Brockton MT. We usually start irrigating sometime in May. Our pump sites are very sensitive to river flow levels due to sedimentation. At high flow levels we must have our pumps set on higher ground, when the water recedes we have to move them again closer to the water in order to minimize suction lift. Excessive suction lift causes inefficient pump operation and if it is severe enough it can cause the impeller to cavitate. The repairs for this are very expensive, parts alone exceed $2000. There are also other problems with high flow rates. When the high flow subsides we never know whether we will be left with an eroded pump site or a silted pump site, the cost to repair either can easily exceed $5000. The problem of repairing a pump site also brings up another point, the 310-permit process. If the river flows are going to fluctuate to the extremes fish and wildlife purposes we need a permit process that allows us to begin work immediately, not 30 days after the problem is realized, but 24 hrs after the pump site operator deems it is necessary. Time is very critical in irrigation if we have to wait even a few days to pump water because of a permit process we can lose our entire crop. If a crop is stressed severely due to drought it doesn't matter how much water you put on after the fact you have still reduced the yield in direct proportion to the severity of the stress that previously occurred. If our pump sites are not changed by the flow rates proposed, then we still have the wet muddy banks to contend with after the water subsides. This is much the same as trying to back a large boat into a body of water without a boat ramp. Our pumps are powered by diesel engines and must be close to the water to operate. Receding water levels make it very difficult to approach the riverbanks due to the depth of the mud left behind by high flow rates. High flow rates in our opinion create erosion problems. low flow rates create nearly impossible pumping situations and constant flow rates of about 10,000 cfs make for ideal pumping for our sites. The cost of these fluctuating flow rates to irrigators on the Missouri River system is tremendous. We urge you to weigh these costs seriously when you make your determination. Agriculture has suffered enough recently. Irrigation is expensive in eastern Montana: the added cost of these high flow rates should not have to be paid for by irrigators. When we developed our irrigation systems we were not cautioned of this scenario nor could we possibly foresee it. Now after spending 10's of thousands of dollars, in some instances, you are putting these dumpsites in jeopardy. We have to ask ourselves if we should spend the money to repair the sites or abandon the irrigation system completely, because even if we fix it this year in three years we are going to see high flow rates again. In these situations the entity responsible for the high flows rates needs to pay for the cost of a permanent repair to each individual pump site that is affected. These propose high flow rates will cause severe economic hardship to agriculture, of this we are sure. Please consider the PEOPLE that are affected by these high flow rates instead of just the fish.

Rene Bidegaray
HCR 80 Box 401
Brockton MT
Rene Bidegaray

PECK0029

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

Other 82

We feel this test is totaly out of the realm of the balance in are enviroment. We want the National Science Foundation to have their study and input to this Fort Peck Flow Modification test. We also feel they would have a more objective view point.

Other 83

We also feel this will effect the livelyhood of Farmers and Ranchers Living along the river. If are irragation Site is damaged or we can't irragate who will pay for damages. This will also hurt businesses in our Local towns

Lone Pine Ranch Inc.
Todd Long

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

X Add me to your mailing list

X Send me a copy of the draft EA

NAME: Lone Pine Ranch Inc

ADDRESS: 1184 West Sand Creek
Wolf Point, Mt. 59201

3 enclosures

PECK0030

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

ErSd 22

Please show in detail What Facts you need From us To Prove a Loss? will you take our word For the Loss?

Hydro 36

we - Montana - designated a drough disaster area This year & NOW government wants To Steal our precious water For 30 days. Run off Figures used by the Corp are Not accurate. are The agricultural interest - irrigation - not even IN The Picture when decisions are Being Made.

ErSd 22

Montana Stream Bank preservation act should be a Top Concern. IS The Corp Above Montana law.

Enclosed is List of Questions
① Copy Stream Bank preservation act 1975
② Letter To Editor - Boyd Hardy

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

✓ Add me to your mailing list

✓ Send me a copy of the draft EA

NAME: Shirley J Hardy

ADDRESS: Rt 1 Box 1740
Fairview Mt. 59221

To the Reader:

I just read the article in the Sidney Herald-- "BAUCUS SUCCESSFULLY DEFEATS FT. PECK DRAWDOWNS." He calls this a victory over downstream users by keeping more water in Ft. Peck Dam during the summer. The 23.6 billion dollar water and energy bill that Senator Baucus and Senator Daschle were instrumental in amending had passed the House approximately 3 to 1 and the Senate 57 to 37 but 2 votes shy of being vetoproof. President Clinton vetoed this bill because he wanted spring surges in the Missouri River. These surges are accomplished by deliberately discharging much more water than usual for 4 weeks duration during May or June and thereby making it more likely that water will have to be restricted during the remainder of the summer.

I have farmed and ranched along the Missouri River for 30 years and I feel that water discharges called for in this Bill--15,000 c.f.s to as high as 30,000 c.f.s.-- will cause flooding and erosion of riverbanks, destroy pump sites and jeapordize an adequate flow in the river for irrigation during summer months. Also, it will restrict barging along the lower regions of the Missouri (the cheapest form of freight to get our crops to market). As a comparison to the cubic feet per second mentioned above that will be mandated by this Bill, Ft. Peck Dam records show the maximum discharge ever recorded from 1937 to 1999 was 35,400 c.f.s. in 1975 due to 7 days of rain and the Dam rising 1 foot per day (resulting in an emergency situation). The next highest was 28,900 in 1979. These discharges were not for four consecutive weeks and may have been only a day or two in duration. The average discharge over those 63 years was approximately 9000 c.f.s. which is very close to what it needs to be to provide a minimum flow for irrigation from the many pump sites up and down the river.

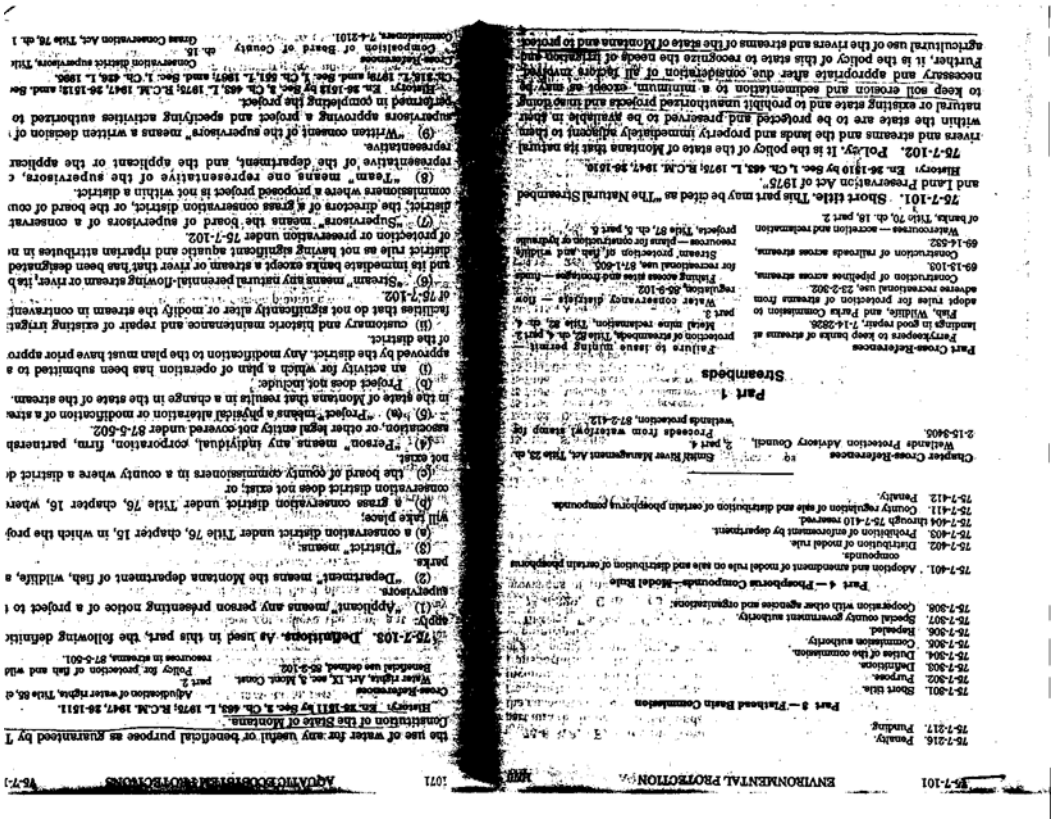
The most unbelievable part of the amendment to this Bill, not mentioned in the above article, is that these man-made surges are to provide better habitat for two birds--the Piping Plover and the Least Tern as well as to experiment to see if warmer water released from the top of the lake by opening spill gates will create a better spawning environment for the Pallid Sturgeon. I am told these animals are endangered species in this area but more plentiful in other areas. With that scenario, isn't every animal endangered somewhere and why aren't human rights superior to animal rights?

I believe that the reasons Ft. Peck Dam was constructed was to prevent flooding, prevent riverbank erosion, provide a stable source of water for downstream users, power generation and recreation. These are being seriously compromised by this short-sited amendment.

I believe as a farmer and rancher we must and do protect the environment as we have a vested interest to do so. I certainly do not want species to go extinct and I would favor giving incentives to private enterprise to accomplish this and not erode personal property rights which so much Environmental Legislation has done.

Sincerely,

Boyd Hardy



Becky latka, 09:40 AM 11/22/00, mini test comments PECK0031

To: Becky latka
From: Milo Mattelin <2mattlin@nemontel.net>
Subject: mini test comments
Cc:
Bcc:

Please consider this to be a formal comment on the proposed mini test below Fort Peck Dam.

While the flows proposed in the mini test are not out of the ordinary for this reach of the River, this is a significant departure from the status quo,and is therefore significant. My first concern is safety. Does the protocol for termination of the testing, in the case of unforeseen problems, provide for safety of the citizens downstream of the dam? What provisions have been made for notification , warnings, and the general safety of the people downstream who are using the river and its' banks for other authorized uses and non authorized uses. Hydro 9

Compensation for damages. I believe that the test should not go forward until there is a mechanism in place to mitigate or compensate for damages caused by releases that depart from the normal May June9-10kcfs releases we have experienced the past 20 years. Work should begin immediately to establish baseline information as to erosion rates and water levels at average flows,9-10kcfs. Other 82, 83

Lastly, the Corps should work closely with landowners to predict river stages at proposed flows on an individual and site specific basis. Also the mini test should be conducted at least one year in advance of implementation of the full test. Hydro 36

Sincerely
Buzz Mattelin

QUESTIONS CONSERNING FLOODING AND DRY UP THE MISSOURI RIVER BELOW FORT PECK DAM.

Please see response to PECK0018

- How many cubic feet per second will be allowed down the Missouri River after the flood so we can irrigate?
- How much money is dedicated to the riverbank erosion of private property along the river?
- How much money will be allocated to landowners for crop damage?
- How much money will be put aside for pump site damage?
- Please show in detail how private property owners below Ft. Peck Dam can prove damage without costing a fortune and be compensated in as fast a time frame as it did to do the damage.
- Will we be guaranteed electricity each year?
- Will we always be guaranteed irrigation water?
- Why doesn't the Corp of Engineers have to obey Montana Stream Bank Preservation Act of 1975?
- Where did this idea originate and what does each test cost?
- Don't irrigators below the dam have the same interest as barge owners?
- How do you flood the Missouri River and waste water a month every year and keep water in Montana?
- Montana was declared a disaster area this summer from drought, this fall for loss of electricity-now we will have a permanent disaster when the Missouri River is flooded. At what point would we have our water cut off entirely for an endangered species?
- Is man creating another disaster area?
- It is criminal to waste water in dry Eastern Montana with a man made flood!

PECK0032

Comment Form
Fort Peck Mini-Test

The Buford-Trenton Irrigation Project is located at the confluence of the Yellowstone and Missouri Rivers in North Dakota. Our main concern about the Fort Peck Mini Test is that this test will cause additional flooding in our project. We feel that river levels on the Yellowstone and below the confluence of the two rivers will need to be monitored and that these levels need to be used as an input parameter when determining dam output quantities. Hydro 9

The time of the year that the test will be taking place is also a time of high levels on the Yellowstone. It is very common for limited flooding to take place in the irrigation district at this time from these flows alone. We feel that it is an unwise decision to further augment the situation with additional flows from the Missouri.

We are concerned about our endangered species as much as anyone but feel that this test, along with the ~~full test~~ in 2002 could cause situations to be very dire for our local producers. We want you to be fully aware that you will effect the production ability of 10,000 irrigated acres and the livelihood of approximately 50 individual farm families. It is our opinion that the negative consequences incurred because of this testing would far out weigh any positive response that could occur. Other 82, 83, 188

Sincerely,

Jerry Shae
Manager, BTID

X Add me to your mailing list
X Send me a copy of the draft EA

Buford-Trenton Irrigation District
PO Box 27 Trenton, ND 58853

PECK0033

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

How can it be that Sen. Baucus and many others think these surges in the Missouri River are a great victory for Montana because it keeps more water in Ft. Peck reservoir for recreation. This is indeed a paradox as these surges will have the exact opposite result. These surges, in my mind, are a great waste of water vitally needed in dry eastern Montana. How can it be called a victory for Montana when it will cause flooding, river bank erosion, pump site destruction and depict reservoir water needed for recreation, downstream municipal and irrigation needs, power generation and barging (the cheapest form of transport to get our crops to market) Hydro 36 FC 29 ErSd 22

These surges are solely for the benefit of three obscure animals and to the detriment of many human beings, including myself. It appears to me that surges are, at best, an experiment to see if a few degrees of warmer water will provide a better spawning environment for the pallid sturgeon. I think the propagation of pallid sturgeon can be accomplished much better in a fishery. EnSp 28

To suggest the Missouri River should revert back to its Lewis & Clark heritage for the benefit of a few animals, is preposterous. As environmentalists feel that farmers and ranchers in the western U.S. are expendible and of far less importance than animals then I feel they should also adjust their standard of living to the Lewis and Clark era. (over)

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

Add me to your mailing list
Send me a copy of the draft EA

NAME: Boyd Hardy
ADDRESS: RR1 Box 1740
Fairview, MT. 59221

PECK0034

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

Other 82, 83

Need A constant Flow of water of 10000 cfs From May – october for irrigation From Ft. Peck & High Enough To irrigate many will Lose Jobs IF irrigation pumps are Washed Away & No water To irrigate Beets-wheat Alfalfa.

Other 188

Endangered species Act is out of Control when a whole area + industry Can Be destroyed & No protection To private property.

Nav 52

This will destroy The Barge'A Moving agriculture products To Market. We need same Steady Flow for Barge + irrigation.

what is the past Flow From Ft Peck & What are the projected Future flows?

Does Anyone That Formulated This policy Make a Living From the Water on The Missouri or Do Any of Them Live here?

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

Add me to your mailing list

Send me a copy of the draft EA

NAME: John So Henderson

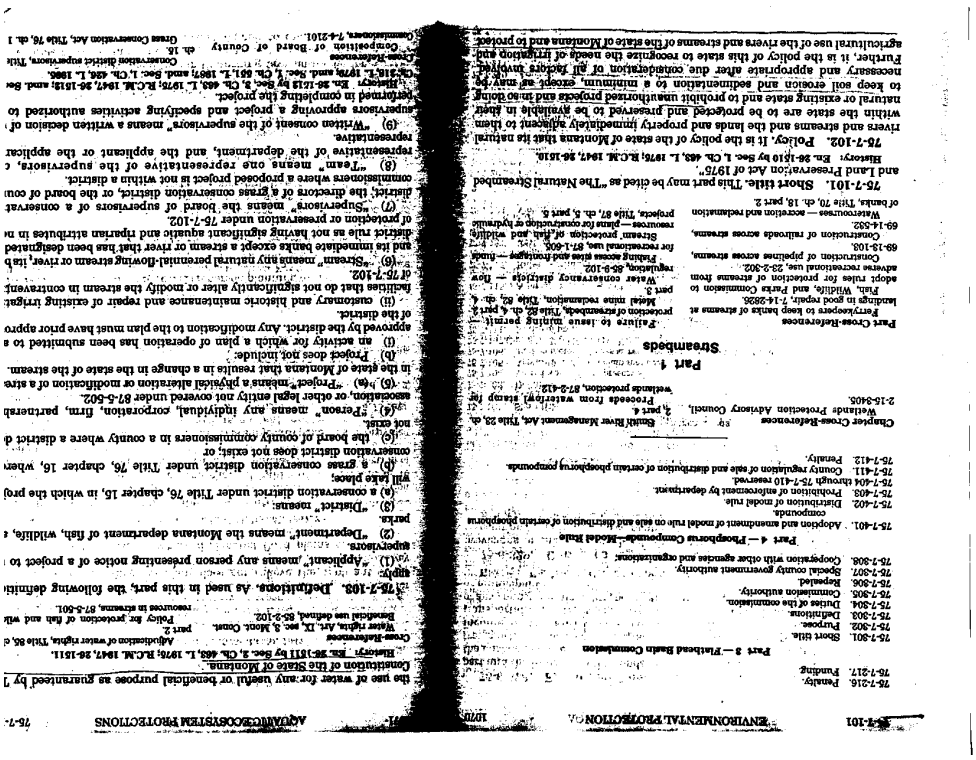
ADDRESS: Rt 2 Box 2584
SIDNEY, mt. 59270

Other 12, 124, 275

What is so admirable about these bizarre about saving endangered species when its accomplished by trampling on the private property rights of others. I believe in saving endangered species the free enterprise way such as environmentalists offering incentives To Farmers & Ranchers and other To accomplish this.

If These surges take place it will be with my complete objection and will be another example of big government trampling on private property rights. The Constitution provides that rights of the minority are To be protected as well as the wishes of the majority prevail

Sincerely
Boyd Hardy
Boyd Hardy



PECK0035

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

IT IS CRIMINAL TO WASTE WATER WITH A MAN MADE FLOOD FOR 30 DAYS. STATE OF MONTANA ONLY GETS 2-12" OF RAIN.

HOW MUCH THOUGHT WAS GIVEN TO IRRIGATION & PRIVATE PROPERTY.

COULD THIS BE THE FIRST STEP TOWARDS BEING DESIGNATED A MONUMENT AWAY BY EXECUTIVE ORDER.

THIS LETTER WON'T MEAN DIDDLY SQUAT WHEN THE GOVERNMENT & ENDANGERED SPECIES PEOPLE JOIN UP AGAINST PRIVATE PROPERTY

Hydro 11

Other 82, 89

Other 197

Other 12, 124, 275

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

* must be received by Jan 1, 2001 *

✓ Add me to your mailing list

✓ Send me a copy of the draft EA

NAME: Tom Hardy

ADDRESS: 6417 Longmeadow Rd,
Charlotte NC 28210

PECK0036

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

PLEASE, PLEASE, PLEASE DO NOT FLOOD MY LAND. I AM A WORKING MAN AND HAVE SPENT MY LIFE'S SAVINGS ON LAND ALONG THE MISSOURI RIVER IN EASTERN MONTANA. MOST OF MY LAND IS LOW AND WOULD BE CONSUMED BY ANY HIGHER THAN NORMAL WATER LEVEL. PLEASE DO NOT PUT ME OUT OF BUSINESS.

FC 29

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

✓ Add me to your mailing list
✓ Send me a copy of the draft EA

NAME: [redacted]
ADDRESS: [redacted]

[redacted]

PECK0037

cmg 9/2/01 Becky L

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

Erosion on the river banks would be increased. Pump sites for irrigation would be effected greatly by this large change in flow.

ErSd 22

People who irrigate would be effected by high and low changes in flow. When the river is to high you have to move your pump & when it is low you can't reach the water.

Other 82, 83

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

X Add me to your mailing list
___ Send me a copy of the draft EA

NAME: Chris Holen
ADDRESS: Box 3146
Wolf Point Mt. 59201

PECK0038

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

EROSION OF RIVER BANK IS the main CONCERN. IN the YEAR 2000. there has BEEN very little EROSION. with the low water level. BUT with the MAJOR UP and DOWN OF RIVER LEVELS, I am sure that would change GREATLY. EVEN the High water level of winter when WATER SOAKS INTO high up BANK IT BREAKS off Big chunks of DIRT IN SPRING when ICE goes out.

ErSd 22

Hydro 13

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

X Add me to your mailing list

___ Send me a copy of the draft EA

NAME: BOB HOGAN

ADDRESS: BOX 3146
WOLF POINT MT
59201

PECK0039

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

If go through with this as a regular program it would be far more palatable to the irrigators if there were some sort of easy to get into, no hassle, program to relocate these pumpsites and/or do some targeted bank protection to protect the pumpsites @ no cost to the irrigator

Other 82, 83

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

✓ Add me to your mailing list

___ Send me a copy of the draft EA

NAME: Bob Bry

ADDRESS: Box 714
Culbertson MT 59218

PECK0041

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. Please print. This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

I'm afraid this test will really cut the river banks out. Pumping irr. water now is tough with different flow rates but if we have to move our pumps it will be terrable. You'll probably do the test no matter what but feel you should help with the trouble it will cause. Please send all information. Thank you.

ErSd.22

Other 82, 83

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

X Add me to your mailing list

X Send me a copy of the draft EA

NAME: Wesley Weinmaister

ADDRESS: H.C. 81 Box 210
Nashua Mt 59248

PECK0042 Becky L

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. **Please print.** This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

This is unfair to the landowners along the Missouri river. They are the one that are to loose the most. With the loss of their land and Crops this could Bankrupt some of them. We lost 25 Acres of Prime Irrigated land in 1997 that $35,000 we lost and I know there will be more land + Crops lost with the full test. There should be a program in place before the test is started to pay for damages. you need to fly the river + take photos before and after to Pay the farmers for loss of land.

Other 82, 83

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

___ Add me to your mailing list

___ Send me a copy of the draft EA

NAME: Jamie Reaves

ADDRESS: PO Box 454
Culbertson MT.
59218

PECK0043 Becky L

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. **Please print.** This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

Other 83

First of all I don't want to see a full TEST done, but if they do the TEST I'd like to see a program to reimburse the Land owner for their Losses. After all they are the only ones loosing here.

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

✓ Add me to your mailing list

___ Send me a copy of the draft EA

NAME: TERRIL Rawn

ADDRESS: PO Box 454
Culbertson MT
59218

APF

PECK0044

COMMENT FORM

Fort Peck Full Test

Please provide your comments on the proposed project. **Please print.** This form is voluntary. Thank you for your comments! Use the back of this sheet, if necessary.

Set up a program to pay the Landowners for any Loss of profit before you ever do the full test. Also why don't they grow the pallid Sturgeon in the Hatchy and release them from there.

Other 82, 83

EnSp 28

Turn your comments in to a Corps representative or mail to: Becky Latka
CENWO-PM-AE
215 N. 17th St.
Omaha, NE 68102

*** must be received by Jan 1, 2001 ***

___ Add me to your mailing list

___ Send me a copy of the draft EA

NAME: Jennery K Rawn

ADDRESS: PO Box 454
Culbertson MT 59218

T0100001

Mni Sose Intertribal Water Rights Coalition, Inc.
P.O. Box 2890, 514 Mt. Rushmore Road
Rapid City, South Dakota 57709-2890

February 28, 2002

Brigadier General David A. Fastabend
Commander and Division Engineer
U.S. Army Corps of Engineers
Northwestern Division
PO Box 2870
Portland, OR 97208-2870

RE: Comments on the Revised Draft Environmental Impact Statement for the Missouri River Master Water Control Manual

Dear Brigadier General Fastabend:

I thank you and the Project Team Members for the Missouri River Master Manual Review and Update for the opportunity to provide comments on the Revised Draft Environmental Impact Statement (RDEIS) Report.

The Mni Sose Intertribal Water Rights Coalition's comments will focus on:
- The Lack of Data on the Alternatives' Impacts to Tribes;
- The RDEIS Comment Period;
- General Ramifications to Tribes;
- Tribal Mitigation; and
- Recommendations.

Lack of Data on the Alternatives' Impacts to Tribes
Under the National Environmental Policy Act (NEPA), the Army Corps must compile and analyze the history, social and economic conditions, cultural resources, and environmental conditions of the affected Indian Tribes. Although the RDEIS is an extensive document, it does not include an adequate assessment of the alternatives' impacts on tribal concerns. The Mni Sose Coalition submitted comments to the Army Corps in September 1993, September 1994, March 1995, June 1999, and September 1999 on the inadequate treatment of tribal concerns in the PDEIS and PRDEIS. Because the RDEIS also lacks sufficient tribal data, most Tribal Leaders may not be able to provide meaningful comments on the proposed alternatives.

Tribal 2,4

On May 13 and 14, 1999, the Mni Sose Coalition Technical Team held a PRDEIS meeting with Army Corps officials, at which Mni Sose voiced concern regarding the Army Corp's economic development modeling. The models do not properly articulate the difference between state and tribal economies. Mni Sose followed up the May 1999 meeting with its September 1999 PRDEIS comment document, which included a proposal for the Mni Sose Coalition to accumulate and analyze tribal social-economic

Telephone: (605) 343-6054...Fax: (605) 343-4722...E-mail: mnisose@qwest.net...Website: www.mnisose.org

statistics, environmental data, and historical resource data for inclusion in the RDEIS. However, the Army Corps rejected the proposal.

RDEIS Comment Period
Although the six-month comment period for the RDEIS is considerably longer than required under NEPA, the Mni Sose Intertribal Water Rights Coalition does not believe six months is a sufficient amount of time for the Tribes to analyze the RDEIS. At the Mni Sose Coalition's January 2002 Board of Directors' meeting, the tribal leaders passed Resolution No. 02-11, which requests a 60-day extension to the RDEIS comment period. The resolution was submitted to the Army Corps on January 25, 2002. As of today, Mni Sose has not received a response to the extension request.

Tribal 16

General Ramifications to Missouri River Basin Tribes
Based upon the information provided in the RDEIS study, a number of generalities can be made regarding the ramifications the Modified Conservation Plan (MCP) and the four Gavins Point (GP) alternatives would have on all the Tribes located in the Missouri River Basin, in relation to the Current Water Control Plan (CWCP).

Advantages—The MCP and GP Alternatives would:
- Improve the chances of survival for the piping plover, the interior least tern, and the pallid sturgeon;
- Increase the quality of recreational use, particularly along the Upper Missouri River;
- Improve drought conservation;
- Increase coldwater fish habitat;
- Enhance native river fish habitat; and
- Expand wetland habitat.

Disadvantages—THE MCP and GP Alternatives would:
- Adversely impact tribal cultural resources and Native remains;
- Provide less flood control;
- Increase damage to interior drainage;
- Increase crop damage;
- Reduce warmwater fish habitat;
- Diminish riparian acreage;
- Increase spillway releases, which could lead to supersaturation of dissolved gases in the downstream river reach; and
- Increase hydropower costs from 3% to 13% under the GP alternatives (the MCP alternative would slightly decrease hydropower costs);

Two of the disadvantages, in particular, need further discussion:

1. Adverse Impacts to Cultural Resource and Native Remains
   The RDEIS does not focus on the alternatives' impacts to tribal cultural resources and Native remains, other than stating that cultural resources may be impacted by any or all of the options, depending on location, type, elevation, and proximity to the riverine environment. As discussed earlier, the RDEIS does not include adequate research on the alternatives' impacts on tribal cultural resources.

Other 148

2. Increased Hydropower Costs
   The National Economic Development (NED) analysis utilized by the Army Corps, which indicates the GP and MCP alternatives would produce increased hydropower benefits, is flawed in that the analysis does not consider the cost to the customers. Based upon Western Area Power Administration's analysis of the RDEIS, tribal customers could see increases of between 3-13% under

HPower 2, 12

T0200001

Intertribal Council On Utility Policy

>>>> P.O. Box 831, Rosebud, SD 57570 Phone: 605-747-4097 Fax: 605-747-4099 <<<<
President Patrick Spears < Pspears2@aol.com > Secretary Robert Gough < Rpwgough@aol.com >

October 30, 2001

Lieutenant Colonel Kurt F. Ubbehohdt, Commander
Omaha District
U.S. Army Corps of Engineers
Northwestern Division

RE: Comments on the RDEIS Missouri River Master Manual

The Intertribal Council On Utility Policy respectfully summits the following comments to the U.S. Army Corps of Engineers opened a six-month public comment period on its Revised Draft Environmental Impact Statement (RDEIS) on their proposed "Master Water Control Manual" for the operation of the six dams on mainstem of the Missouri River. These comments address renewable energy options, specifically wind and Missouri River.

Over ten years in the works, this revised draft EIS lays out a series of seven operating alternatives that juggle the needs and impacts on a variety of river interests and activities – from protecting water quality, shorelines, wetland and riparian habitats, cultural resources and endangered species along the Missouri, to protecting navigation and barge traffic on the lower Mississippi – while trying to provide a balance of flood control and hydropower to communities throughout the Missouri River basin. Each alternative tips the balance in favor of some interests over others.

Going into a public comment process on its RDEIS, the Corps has provided hundreds of pages of information detailing the arguments for and against the various alternatives, along with the likely impacts of each alternative on the river system. The RDEIS fails to provide an agency preference among the various alternatives, as such documents usually offer. However, an even more extraordinary omission, and one with far reaching economic and environmental implications for communities throughout the Missouri River Basin, is the role that wind power generated on the farms, ranches and reservations of the northern Great Plains could play in giving the Corps greater flexibility in managing the Missouri River.

HPower 13
WAPA 7

Over the past two years, the Intertribal Council On Utility Policy has raised the issue of the wind power potential to help meet not only the Corps obligations on the river, but also the Western Area Power Administration's (WAPA) dependence on hydropower for the transmission of low cost energy throughout the region.

HPower 13
WAPA 8

This potential for clean, low-cost, home-grown energy grows in importance given the shifts in precipitation patterns and reduced mountain snowpack seen again this year. These weather shifts are consistent with scenarios for longer-term climate change and variability in our region. Shortfalls in hydropower production are expected to increase costs in supplemental electrical power necessary for WAPA to meet its present contractual obligations.

the GP alternatives (Under the MCP alternative, customers would see a slight decrease in hydropower costs.)

Historically, the Tribes in the Missouri River Basin have borne a disproportionate burden of the environmental, cultural, and economic costs associated with the Pick-Sloan project. Ironically, these Tribes pay some of the highest energy prices in the country despite their high poverty rates. After years of negotiations, 27 of the Missouri River Basin Tribes now receive low-cost, federally generated hydropower from Western Area Power Administration. If the Army Corps selects one of the GP alternatives, tribal citizens will see their energy bills increase by up to 13%. The tribal hydropower benefits would essentially be eliminated.

Tribal Mitigation
Under Presidential Executive Order 12898 on Environmental Justice, the Army Corps must propose plans to mitigate the impacts of its operations on the Tribes because of the disproportionate impact of its operations on Native American communities. However, none of the alternatives outlined in the RDEIS address tribal mitigation measures.

Legal 33

Mni Sose Coalition's RDEIS Recommendations:

- Work with the Mni Sose Coalition to compile and incorporate the requisite tribal data into the RDEIS. A multi-year plan should be developed and implemented to ensure the Corps possesses and considers the tribal data required by NEPA.
- Extend the comment period for the RDEIS for an additional 60 days to allow the Tribes and other stakeholders with additional time to analyze the effects of the proposed alternatives;
- Coordinate with Tribes on mitigation efforts in regards to the alternatives' impacts to tribal communities and cultural sites.

Tribal 17

Tribal 16

Other 148

The Mni Sose Intertribal Water Rights Coalition appreciates the opportunity to voice its concerns and recommendations regarding the RDEIS and is willing to work with the Army Corps of Engineers to ensure that tribal concerns are addressed in the revised Master Water Control Manual.

Sincerely,

Gary Collins
President

cc: Missouri River Basin Tribal Presidents and Chairpeople
Mni Sose Tribal Delegates
MRBA Board Members

N:\Working Files\DATA\ACOE\RDEIS\Mni Sose Comments.doc

A recent report, in the Sioux Falls Argus Leader (6/17/01), Kevin Woster noted that:

> *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…*
>
> *Corps water specialists are projecting the lowest total power generation for the Missouri River system this year since record keeping began in 1967.*
>
> *The corps is projecting total power generation for the year at 6.2 billion kilowatt hours. Normal is 10.2 billion.*

HPower 13
WAPA 9

The U.S. Army Corps of Engineers and the Western Area Power Administration should explore the potential of adding distributed wind generation to the Missouri River basin's electrical grid system in terms of cost, power supply, and greater operational flexibility in river management, not to mention the enhanced environmental resulting from an energy source with no toxic emissions or waste storage problems associated with more conventional fossil or nuclear based energy generation.

The wind resources of the Great Plains 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 could significantly contribute to the energy budget of the entire West, as well as to the local economies surrounding the reservations.

HPower 13
WAPA 10

Intertribal COUP has formally requested that the relevant federal energy agencies explore the tremendous potential of utilizing both intermittent, but predictable and unlimited wind resources and the firm, but limited and diminishing hydropower resources, in tandem to create an even more powerful western renewable energy system built on a federal-tribal partnership.

In addition to being a clean renewable resource, wind energy can be cost -effective at 3 cents per kilowatt hour. Further, wind has several major advantages over its conventional rival sources of energy. The cost of its energy input never changes over the life of the installation (30 years) in contrast to natural gas-fired plants where fuel 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 retail electricity market costs.

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, lower river flow levels or rising energy costs.

Developing a regional wind-hydro hybrid system built upon the treaty relationship between Great Plains Tribes and the federal government (COE, BOR, WAPA, DOE and BIA) 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. It is time to rethink not only the way we manage our greatest and most threatened river, but how we plan to power our economy through the 21st century.

HPower 13
WAPA 11

The Intertribal Council On Utility Policy has actively supported the efforts of Tribes in the Northern Great Plains to develop opportunities for Tribal energy development, with particular emphasis on renewable wind energy development. Intertribal COUP has sought agency consultation and inclusion of a formal consideration of wind power generation in the operation of the Missouri River hydropower system. More broadly, COUP has worked with the Inter-Tribal Energy Network over the past two years in developing a number of federal legislative and policy recommendations, which are incorporated in the Tribal Energy Self-Sufficiency Act.

Hpower 13
Tribal 18

Intertribal COUP encourages the U.S. Corps of Engineers to consult with every Tribe to formally support these Intertribal initiatives. Further, Intertribal COUP requests that the Master Manual adequately consider a wind-hydropower hybrid generation scenario, and incorporate an analysis of the impacts of climate change and variability on the proposed management plan for the Missouri River.

Thank you for your consideration and attention to these important issues.

Sincerely,

Patrick Spears, President

Robert Gough, Secretary

Attachments:
Intertribal COUP Letter Re: Master Manual
Answer from Department of Energy
Answer from Department of Defense

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 Pspears2@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

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

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

The Secretary of Energy
Washington, DC 20585

August 9, 2001

Mr. Patrick Spears, President
Mr. Robert Gough, Secretary
Intertribal Council On Utility Policy
Box 831
Rosebud, SD 57570

Dear Mr. Spears and Mr. Gough:

Thank you for your June 27, 2001, letter regarding the growing interest in wind development among the Tribes of the Northern Great Plains. I appreciate your views, and share your interest in the potential of this important renewable resource.

I am aware of the importance of the Master Operating Manual process, being conducted by the U.S. Army Corps of Engineers (Corps), to the Missouri River region. To the extent the Corps decides to consider the potential of wind generation in its process, I will encourage the Western Area Power Administration (Western) to participate in an analysis of the impacts.

As you are aware, Western has adopted a marketing plan for power generated from the Pick-Sloan Missouri Basin Program-Eastern Division through the year 2020. Your proposal to integrate hydroelectric and wind power must be considered in light of the provisions of this marketing plan. Western's established policy for purchase of renewable resources is very compatible with your goal of "clean, reliable, low cost, rate based energy supply."

Due to budgetary constraints, I cannot commit to technical and financial support for engineering and interconnection studies at this time. Requests for transmission service and interconnection are subject to the provisions of Western's open access transmission tariff. The Department of Energy (Department) continues to explore the costs and benefits of a "green tag" program, and will consider funding after evaluation of other energy priorities.

Pursuant to the National Energy Policy, the Department is examining the benefits of establishing a national transmission grid in a report, which will be completed by the end of the year. The United States must invest in a clean, reliable and diverse portfolio of domestic energy supplies as part of a sound national energy policy.

Printed on recycled paper

I appreciate your interest in harnessing abundant, naturally occurring sources of wind energy and look forward to continued consultation with Tribes, pursuant to the Department's American Indian policy.

Sincerely,

Spencer Abraham

cc:
The Honorable Thomas E. White
Secretary of the Army
Washington, DC 20310-0101

The Honorable Gale Norton
Secretary of the Interior
Washington, DC 20240

Mr. Michael S. Hacskaylo
Administrator
Western Area Power Administration
P.O. Box 281213
Lakewood, CO 80228-8213

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

REPLY TO ATTENTION OF

28 SEP 2001

Mr. Patrick Spears
President, Intertribal Council
on Utility Policy
Box 831
Rosebud, South Dakota 57570

Dear Mr. Spears:

Thank you for your letter of June 27, 2001, to The Honorable Thomas E. White, Secretary of the Army, concerning the growing interest in wind development among the Indian tribes of the Northern Great Plains. We agree with you that there may be ways in which the Army Corps of Engineers can consult and cooperate with Indian tribes in the Missouri River Basin to study and deploy wind technologies. If successful, such activities would help sustain Indian economies and significantly augment the availability of electric power in the region.

After a preliminary review of the information you provided, the Corps advises me that there may be opportunities to examine further the type of natural resource development you propose under Section 203 of the Water Resources Development Act (WRDA) of 2000, referred to as the Tribal Partnership Program (TPP). The TPP authorizes the Secretary of the Army, acting through the Corps, to conduct studies that "substantially benefit Indian tribes" and that "are located primarily within Indian country." Under this authority, the Army can work with Indian tribes and the heads of other Federal agencies, to determine what kinds of projects might be studied and implemented. Although this office did not specifically envision wind power generation projects when we included this provision in the Administration's WRDA proposal to the Congress, we do believe that the provision is flexible enough to allow the Corps to study such proposals, and implement them, if authorized, under Section 203. One potential limitation is that we would need to focus our efforts on projects located within the exterior boundaries of Indian reservations associated with civil works projects (i.e., Pick-Sloan Missouri River Basin Project, Fort Peck Project).

Your letter also notes that wind power generation should be considered by the Corps as they move forward with plans to revise the Missouri River Master Water Control Manual. On August 28, 2001, Corps published in the Federal Register a notice of availability (enclosed) for the Draft Environmental Impact Statement (DEIS) for the Missouri River Master Water Control Manual Review and Update. I will forward a copy

of your letter to the Corps Northwestern Division for their consideration during the comment period on the DEIS. I encourage you to contact the Corps and work with them to explore your ideas concerning the generation of wind power.

Proposals for TPP studies will be developed by Corps Commands and submitted to Corps Headquarters for consideration in the President's budget request. I would encourage you to open a dialogue with Lieutenant Colonel (P) Kurt F. Ubbelohdt, Commander of the Corps Omaha District, concerning the development of a study proposal under the TPP. The President's budget proposal for Fiscal Year (FY) 2002 has been submitted to Congress. In the meantime, I would encourage you to contact the Omaha District to see if there are other ways the Corps can assist you, such as providing technical information or discussing potential implementation issues in advance.

I am hopeful that communication and consultation with the Corps will serve to forge a solid and responsive relationship with your organization. To aid in the development of effective communication, I am providing Lieutenant Colonel Ubbelohdt with a copy of this letter. Additionally, the next time you visit Washington, D.C., perhaps we can meet and discuss further our Nation's energy goals. Please continue to coordinate with Mr. Chip Smith, my Acting Deputy Assistant Secretary of the Army (Policy and Legislation). Mr. Smith can be reached at (202) 761-7769.

Sincerely,

Dominic Izzo
Principal Deputy Assistant Secretary of the Army
(Civil Works)

T0300001

Tribal Comments
Cheyenne River Sioux Tribe
Preservation Office
COE Master Manual

HISTORIC PROPERTIES

The C.R.S.T. Preservation Office has reviewed the United States Army Corp of Engineers Missouri River Master Water Control Manual and prepared the following commentary on behalf of the Cheyenne River Sioux Tribe. Historic properties under National Historic Preservation Act include historic and prehistoric archaeological sites, historic architectural and engineering features and structures and resources of significance to Native Americans and other social or cultural groups. The Master Manual has a property value index for historic sites that reflects an increase or a decrease in value concerning impacts to sites based on water levels. The higher the value the less effect on a historic site. The value index is created upon the number of "known" sites that exist along the lakeshores and then mathematically computing the percentage of site degradation occurring as a result of a water level impact.

The National Historic Preservation Act identifies properties that are included under the term historic properties however NHPA does not include in its definition section any language pertaining to Traditional Cultural Properties (TCP). Traditional Cultural Properties are discussed in NPS Bulletin 38 and this document the Master Manual does not reference. NHPA does make reference to "*Traditional religious and cultural properties*" in section 101(6)(A) but it does not identify specifics and makes absolutely no mention of these in the definitions section 301 (16 U.S.C. 47w). Other 148

The tribal position is that the Corp has failed to adequately identify all of the property types that are located along the lakeshores and that it has based its property value index on outdated and inaccurate information. The database used to develop the value index is dated for 1993 while the technical report is dated 1994. Furthermore the tribe believes that the projected impact zone used by the Corp to assess and/or calculate impacts to sites is inadequate because it does not extend far enough off of the 1620 elevation line. Erosion along the lakeshore causes sloughing and this sloughing reaches back onto the land quite a distance from the lakeshore and sites that are located above the 1620 line and sites located out of the impact zone do receive impacts and suffer degradation as a result of sloughing. Another concern the tribe has concerns the east bank of the lakeshore. Corp take lands on the east bank do not extend as far back from the shoreline as they do on the west bank lands. The take lands on the east bank and the Corp Other 148 CR 21 Tribal 47

02/25/2002 12:19 FAX 4022214886 CORPS OF ENG. PLANNING 003

TELEFAX COVER SHEET

Cheyenne River Sioux Tribe
Preservation Office
P.O. Box 590
Eagle Butte, South Dakota 57625
(605) 964 – 7554
Fax: (605) 964 – 7552

DATE: 2/25/02

TO: Mary Lee Johns COE

FAX NO. 402-221-4886

FROM: Sebastian (Bronco) LeBeau C.R.S.T. Preservation Officer

NUMBER OF PAGES (INCLUDING COVER SHEET) 3

COMMENTS: Here are my comments on the Master Manual. Sorry I couldn't deliver them on the 11th & 12th

The C.R.S.T. Cultural Preservation Office was established in 1992 under the authority of Tribal Ordinance No. 57 the Cultural Resources Protection Act of the Cheyenne River Sioux Tribe. The Preservation Office is responsible for administering and regulating cultural preservation activities and those responsibilities include: Oral History, Repatriation, Historic Preservation, Tribal Archives.

obligation to mitigate and preserve known sites only extends to the take land boundary line. Sites located above this line are receiving impacts due to lake operations but are they included in the known sites listing? CR 22

The Corp data used to establish its value index is simply to old and outdated to be used as the basis for the index. A case in point is in 2001 surveys were done on 20+ recreation areas scheduled to transfer to the State of South Dakota. Known sites located at these recreation areas were surveyed to check their condition and determine if or how they had been impacted since their original discovery. In this particular project several of the sites listed in the database and revisited by Corp archaeological personnel to investigate them were gone. They had been eroded and washed out into the lake. The tribe asserts that follow up surveys on the "known" sites has not been done on a regular basis to gage whether or not existing sites lying along the lakeshore are 100%, 75%, 50%, 25% intact or have already been destroyed. This is extremely important to know because this information directly affects the existing database. The tribal assumption is the value index is based upon the number of known sites and that these sites are at 100% integrity. If however this is not true then the database information is already flawed and inaccurate and the value of the sites is off. Other 148 Other 148

CONCLUSION

The tribe wants new surveys done on the lakeshores to locate and identify previously unknown sites referenced in NHPA but also TCP sites, which the Corp has little information on. Follow up surveys on known sites must be done to measure their current integrity against their original integrity when first recorded. To truly calculate the impact effect on sites based upon water levels TCP property types must also be included into the COE value index and all of the above concerns must be done. Remember that the alternatives presented in the Master Manual address impacts only to known historic properties and the tribal position is that no efforts have been made to factor in impacts to TCP sites or impacts to sites outside the projected impact zone. Based on the commentary the tribe at this time cannot endorse any of the alternatives currently listed in the Master Manual. If as we suspect that the database is inaccurate then the value index reflecting impacts to known sites is also inaccurate and does not portray a true measurement. Other 148

T0300002

P.O. Box 590
Eagle Butte, South Dakota 57625
(605) 964 - 4155
Fax: (605) 964 - 4151

February 28, 2002

U.S. Army Corps of Engineers
Northwestern Division
Attn: Missouri River Master Manual RDEIS Project Manager
12565 West Center Road
Omaha, NE 68144-3869

Reference: Master Manual RDEIS Comments

Dear Sir/Madam;

On behalf of the Cheyenne River Sioux Tribe, I am honored to submit the enclosed comments on the Master Manual RDEIS for the Cheyenne River Sioux Tribe. The Cheyenne River Sioux Tribe appreciates the opportunity to provide comments on the Master Manual RDEIS.

If you should have any further questions, please feel free to contact David Nelson, Director for the CRST Environmental Protection Departments' office at (605)964-6559.

Sincerely,

Gregg J. Bourland, Chairman
CHEYENNE RIVER SIOUX TRIBE

GJB/ddn

David D. Nelson, Director
Cheyenne River Sioux Tribe
Environmental Protection Department
P.O. Box 590 South Willow and Airport Road
Eagle Butte, South Dakota 57625
Phone: 605-964-6559
Fax: 605-964-1072
E-Mail: crstepd@sat.net

EXECUTIVE RESOLUTION NO. E-49-02-CR

WHEREAS, the Cheyenne River Sioux Tribe is an unincorporated Tribe of Indians, having accepted the provisions of the Act of June 18, 1934, (48, Stat. 84), and

WHEREAS, the Tribe, in order to establish its tribal organization; to conserve its tribal property; to develop its common resources; and to promote the general welfare of its people, has ordained and established a Constitution and By-Laws, and

WHEREAS, the Cheyenne River Sioux Tribe is committed to the protection of its natural resources and environment; and

WHEREAS, the Cheyenne River Sioux Tribe is a major stakeholder in the Missouri River Basin and the Tribe has a vested interest in the Management of the Missouri River Mainstem Reservoir System by the U.S. Army Corps of Engineers; and

WHEREAS, the intent of the Revisions to the Corps' Master Water Control Manual will directly and significantly impact the Cheyenne River Sioux Tribe ; now

THEREFORE BE IT RESOLVED, that the Cheyenne River Sioux Tribal Executive Committee on behalf of the Cheyenne River Sioux Tribe does hereby authorize the submission of comments from the Tribe concerning the Corps' proposed alternatives for revising the Master Manual.

CERTIFICATION

This is to certify that the foregoing resolution has been reviewed and approved by the undersigned Executive Committee acting in the best interest of the Cheyenne River Sioux Tribe, this 28th day of February 2002, in Eagle Butte, South Dakota.

Gregg J. Bourland, Chairman

Colette Iron Hawk, Secretary

Benita Clark, Treasurer

MASTER MANUAL COMMENTS

The Cheyenne River Sioux Tribe is a major stakeholder in the Missouri River Basin. As such, the Tribe has a vested interest in the management of the Missouri River Mainstem Reservoir System by the U.S. Army Corps of Engineers. Revisions to the Corps' Master Water Control Manual (Master Manual) will directly and significantly impact the Cheyenne River Sioux Tribe. Following are the Tribe's comments concerning the Corps' proposed alternatives for revising the Master Manual..

GENERAL

> *To the greatest extent practicable and permitted by law, . . . 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 in the United States* . . . . (emphasis added)
>
> Executive Order 12,898, 1994

Executive Order 12898 places on federal agencies the task of achieving environmental justice. To do so, the agencies must identify and address disproportionately high and adverse effects of their actions on minority and low-income populations. Operation of the Missouri River is an action of the Corps of Engineers requiring compliance with EO 12898. Preparation of the Revised Draft Environmental Impact Statement for the Missouri River Master Manual (RDEIS), requires the Corps to comply with the National Environmental Policy Act (NEPA). The combination of E.O. 12,898 and NEPA creates a process in which the Corps must not only *identify* the impacts of its operation of the Mainstem Reservoir System which disproportionately and adversely affect the basin tribes, it must also come up with ways to *mitigate* those impacts. While the Corps has gone to great lengths to fulfill the former obligation, identification, little has been done to fulfill the latter, mitigation. In short, much work remains to achieve environmental justice.

Tribal 19
Legal 34

Water level fluctuations in Lake Oahe are of great concern to the Cheyenne River Sioux Tribe. Fluctuating water levels are eroding the western shoreline of Oahe and destroying tribal cultural and historic sites at an alarming rate. Water quality is affected by lake level fluctuation and ice movement near the intake for the Tribe's main drinking water supply. Water level changes also result in the propagation of noxious weeds, adversely impacting the Tribe's cattle industry. Each of these impacts are discussed below.

Lake level fluctuations are perpetuated under all six plans for operation of the Mainstem Reservoir System being considered by the Corps of Engineers in this RDEIS process. For that reason and others discussed herein, the Cheyenne River Sioux Tribe does not endorse any of the alternatives under consideration.

HISTORIC PROPERTIES

According to the Corps' Historic Properties Technical Report (Corps 1994q), the Smithsonian Institution conducted a survey of historic properties in the Missouri River basin prior to filling the lakes. Although archaeologically significant at the time, the surveys are very meager by modern standards. The Corps began comprehensive survey and inventory programs in 1974. Because they took place after the lakes were filled, these surveys involve lands at or above normal pool elevations. The combination of the Smithsonian and Corps surveys includes 212,000 acres surveyed and 1,400 sites inventoried. Although the 212,000-acre figure sounds impressive, the Corps goes on to state at p. 4 of its report that "it is reasonable to speculate that not less than 50 percent of all historic properties existing within the five downstream projects are normally inundated." (Corps 1994q p. 4) This cuts the number of surveyed sites above the pool from 1,400 down to 700 or less. Incidentally, only the five downstream reservoirs are included in these numbers, because Ft. Peck was inundated at the time of the Smithsonian surveys.

Little was known about Ft. Peck's archaeological resources until recently, states the Corps at p. 3-169 of the Master Manual RDEIS. Little was known until the Corps sponsored a survey of 2.3% of the shoreline of Ft. Peck Reservoir. The survey revealed 159 sites, which, when extrapolated, could yield 2,000 more sites on the shoreline of that reservoir. Why is extrapolation necessary? Why were only 2.3% of the shoreline surveyed?

CR 23

Regarding historic properties at the five downstream reservoirs, the Corps lists 1,402 achaeological sites in and adjacent to Lake Sakakawea, 1,114 at Lake Oahe, and 165 "other archaeological sites" for a total of 2,681 sites. (RDEIS p. 3-169). Obviously, these numbers differ from the Corps' reference to 1,400 sites in its technical report on historic properties supporting the RDEIS. The difference raises the question, "What are the real numbers?" Even more important, however, is the question "Are the numbers accurate and complete?" The answers to these questions are crucial, because the Corps' evaluation of the potential for erosion of historic properties from the RDEIS alternatives for operation of the Mainstem Reservoir System were based upon the Corps' estimation of the number of historic properties on the shorelines of the respective reservoirs. It is the position of the Cheyenne River Sioux Tribe that the Corps has not taken steps necessary to adequately identify historic properties within the area of potential effects of its operation of the Mainstem Reservoir System.

CR 24

Title 36 of the Code of Federal Regulations § 800.4 requires the Corps to gather information from Indian Tribes and "take the steps necessary to identify historic properties within the area of potential effects." 36 C.F.R. § 800.4(a)(4) and (b). The level of effort required of the Corps includes making a "reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the *nature and extent of potential effects on historic properties*, and the *likely nature and location of historic properties within the area of potential effects*." 36 C.F.R. § 800.4(b)(1) (emphasis added).

Other 148
Legal 35

The Tribe acknowledges that the Corps has consulted with it concerning historic properties. However, the Tribe lacks the capacity to adequately respond to Corps inquiries because it lacks the funding and manpower to undertake a comprehensive survey of historic properties on the shoreline of Lake Oahe. Moreover, while the Corps has apparently conducted studies of historic properties in the Missouri River basin, those studies do not constitute a systematic, comprehensive survey. Such a survey is needed. In 2000, more than 150 previously unrecorded traditional and cultural properties were found by the CRST's Preservation Office in the course of surveying recreational lands slated for transfer from the Corps to the Tribe under the Terrestrial Wildlife Habitat Restoration legislation (known as "Mitigation"). These recreation areas constitute a small percentage of Oahe's western shore within the CRST Reservation. If the numbers are extrapolated to the entire western shoreline, then many more sites could be added to the Corps' list of "known sites" based on this relatively small survey alone. It is unlikely that the newly found sites were utilized by the Corps in calculating its historic properties index values for Lake Oahe in the RDEIS. The properties are not listed in the Omaha District's Historic Properties Database File, attached as Exhibit A to the historic properties technical report. This is not surprising, since the date of the Database file is 1993, and the date of the technical report is 1994.

Other 148

CR 9, 12,17
Other 148

If these newly discovered sites were not included in Corps' evaluation of the impacts of the proposed alternatives on historic properties, then certainly the as-yet undiscovered sites on the remaining lands on the western shore of Lake Oahe were not considered. The Corps clearly states in the RDEIS that its evaluation of the impacts of its operation of the Mainstem Reservoir System is based upon known sites only. In section 5 of the RDEIS, the Corps states that "[t]he long-term potential for erosion at each *known site* was evaluated based on the monthly water level in each of the three upstream lakes and Lake Sharpe." (RDEIS p. 5-137) It states at p. 7-183 that "only the effect to *known sites* is considered in the historic properties index . . . ." (emphasis supplied) Given "*the nature and extent of potential effects on historic properties*, and the likely nature and location of historic properties within the area of potential effects," the Corps' efforts to date do not constitute a "reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey." 36 C.F.R. § 800.4(b)(1) (emphasis added).

CR 15, 17

It is a foregone conclusion that operation of the Mainstem Reservoir System on the Missouri River is a federal undertaking of incredible magnitude pursuant to 36 C.F.R. § 800.4(b)(1). So is changing that operation. The Corps' level of effort in identifying historic properties on the shorelines of the Reservoirs is also driven by the nature and extent of the potential effects of River operations on historic properties. 36 C.F.R. § 800.4(b)(1). The Corps recognizes that "[h]istoric properties located within the reservoir zone are subject to annual fluctuation, and properties located within a few vertical feet up or down from that zone, are likely to receive a wide range of severe impacts." Given the magnitude of the Corps' undertaking and the extent of the potential effects on historic properties, the level of effort required of the Corps in identifying historic properties subject to destruction due to wave action and erosion, is high.

The Corps' obligation with regard to historic properties does not stop there, however. In addition to identifying historic properties and assessing adverse effects on them, Corps officials must develop measures *in the RDEIS* to avoid or mitigate such affects. 36 C.F.R. § 800.8(c)(4). The Corps acknowledges this obligation at p. 12 of its technical report on historic properties, where it states: "Procedural compliance [with the National Historic Preservation Act and NEPA] further requires description, evaluation of, and agreement upon, any measures proposed to mitigate the adverse effect, or selection of an alternative to the Federal undertaking in question." The Corps quickly rules out the idea of developing an alternative to operating the existing reservoir system, or an alternative for operating the reservoir system that would not adversely impact historic properties. Instead, it concludes that mitigative measures to lessen the severity of impact may be the only means of compliance. Corps 1994q p. 12.

Legal 36

Unfortunately, mitigation measures called for under Section 106 of the National Historic Preservation Act are lacking in the RDEIS. The Corps tells us that lake level fluctuations and wave action are inevitable in the operation of the Mainstem Reservoir System. It states that "Known historic properties, which include but are not limited to prehistoric sites, Tribal cultural resources, and historic sites, are adversely affected by all the alternatives. Increased conservation during droughts is likely the primary factor leading to this result." RDEIS p. 7-233. The Corps then points to the bank stabilization efforts undertaken in the lower basin as evidence of its attempts to mitigate the adverse impacts of Reservoir operations on historic properties. Table 3.15-1 at p. 3-171 of the RDEIS details these efforts. Only 21 bank stabilization projects are listed for a total expenditure of $1,759,000 over 23 years. Repatriation of Native American remains under the Native American Grave Protection and Repatriation Act adds little to the Corps' column. When compared with the millions of dollars being spent or sacrificed to mitigate the adverse impacts of River operation on three listed species in the basin, the Corps' efforts at addressing the destruction of irreplaceable historic properties would be laughable if the situation were not so serious.

CR 15,17

Clearly, the Corps has thrown up its hands. In its historic properties technical report, the Corps advises that measures to mitigate the loss of value inherent in historic properties involve either site protection or information retrieval (archaeology). Either measure, says the Corps, requires substantial investment of money and manpower, both of which have historically been in short supply compared with the legislative compliance requirements. Corps 1994q p. 12. The Corps concludes its discussion of Mitigation Requirements at § 7.20.1 of the RDEIS with a remarkable statement:

> Because the Corps has ***existing programs*** to address the protection of sites or their documentation if protection cannot be accomplished, ***new efforts*** to mitigate the effects of the operation of the Mainstem Reservoir System on known sites ***are not required***. Continued efforts to protect the sites are necessary to limit the adverse effects of the exposure or loss of the known sites.

(emphasis supplied).

Finally, NEPA and the National Historic Preservation Act require the Corps to not only develop measures to avoid, minimize or mitigate adverse effects on historic properties of operation of the Mainstem Reservoir System, but to include a binding commitment to such

CR 16, 17
Legal 37

measures in its Record of Decision on the Master Manual. The near-nonexistent status of the Corps' mitigation measures for historic properties raises the question, "binding commitment to what?"

In sum, historic properties are as priceless and threatened as the least tern, piping plover and pallid sturgeon. The entire River System is being altered to address the plight of these animal species. The Cheyenne River Sioux Tribe is requesting that the Corps give the same consideration to its endangered historic properties.

CR 15,17

In light of the above, the Cheyenne River Sioux Tribe objects to the RDEIS on the grounds that it does not meet the standards set forth in 36 C.F.R. § 800.8(c)(1).

WATER QUALITY

In the water quality portions of the RDEIS, the Corps tells us that problems exist. "Elevated concentrations of arsenic, manganese, iron and beryllium have been monitored in Lake Oahe and its inflows." RDEIS p. 3-56. In 2000, state water quality standards for mercury, phosphorus, sulfate and iron were exceeded at Lake Oahe. U.S. Army Corps of Engineers 2000 Annual Report, pp. 11-12. Arsenic commonly exceeds state water quality standards in Missouri River Lakes. RDEIS p. 3-47. Although arsenic, selenium and mercury occur naturally in the soils of the basin, mining in the Black Hills has contaminated the Cheyenne River with high levels of mercury. The Cheyenne flows into Lake Oahe and forms the southern boundary of the Cheyenne River Reservation.

In addition, sediment is being eroded, transported, and deposited within the dam system. This is a normal process – sediment was continually moved by the Missouri River even before it was dammed. Now, however, sediment is settling out in the reservoirs and at the mouths of tributaries flowing into them. Significant sediment deposition is apparent at the mouths of the four major tributaries that flow into Lake Oahe -- the Cheyenne, Moreau, Grand, and Cannonball Rivers. Corps, 1994t, p. 19. The sediment in these deltas contains arsenic, mercury, and other metals. Arsenic and mercury are of particular concern to the Cheyenne River Sioux Tribe, because the intake for the Tribe's main public water supply system is located in the Cheyenne Arm of Lake Oahe.

Wave action, lake level fluctuation and ice movement stir up sediment. According to Tables 5.4-1 and 7.4-1 in the RDEIS, "wave action erodes and agitates the lake sediments during low lake levels, potentially causing elevated dissolved arsenic concentrations in the water column." These "[e]levated arsenic concentrations during low lake elevations and drought conditions may affect domestic water use (requiring additional treatment prior to domestic use) and cause chronic effects to aquatic life in lakes." The adverse effects are greatest during droughts, when lakes are drawn down and bottom sediments are exposed to wave action. RDEIS pp. 5-26-28, 7-26-28.

Both Oahe Dam releases and lake levels vary considerably. In its water quality technical report supporting the RDEIS, the Corps states, "[R]eleases have been extremely variable since

the project became fully operational." Daily outflows range from less than 1,000 cubic feet per second up to 55,000 cubic feet per second. Regarding lake levels, the technical report states, "Much fluctuation has occurred throughout the history of the reservoir." Corps 1994t, p. 19.

Several years ago, the Missouri Basin States Association asked the Corps to sample and analyze delta sediment to test the hypothesis that raising and lowering lake levels result in sediment resuspension, potentially adding contaminants to the reservoir and degrading water quality. Corps 1994t, p. 36. Sampled pollutants included mercury, cadmium, lead, chromium, zinc, selenium, arsenic, nickel, and pesticides. Significantly, *arsenic consistently showed significant increases sometimes exceeding a factor of 10*. Corps 1994t, p. 44.

Moreover, the finer the sediment, the greater the arsenic concentrations. Corps 1994t, pp. 44 and 52. "[F]iner sediments are generally more chemically active thus, perturbations such as wind-wave action can result in chemical changes associated with the transfer of materials from an anaerobic environment in the sediment to an aerobic environment in the overburden water." It is also suspected that storm events and high winds, which are common in the Missouri River basin, cause high metal concentrations in the water. Corps 1994t p. 44.

The Corps emphasizes that the stirring of bottom sediments in shallow areas of the reservoir is going to occur no matter what the pool elevation. "This is a natural, on-going process which occurs at all reservoirs with relatively soft bed sediments." Corps 1994t, p. 44.

On the other hand, "[d]elta growth is a dynamic process, and as the reservoir fills, areas which are now comprised of fine sediments [silts and clays] will eventually become areas dominated by more coarse sediments [sand] as the delta grows in the downstream direction." As particle size increases, arsenic concentrations generally decrease. Unfortunately, "[t]he Oahe, Moreau, and Grand River Deltas could not be analyzed for particle size relationship, since only one sample was taken." Corps 1994t, pp. 44-45, 52.

In sum, arsenic exists in the sediment of the deltas of tributaries flowing into Lake Oahe. The arsenic is found in higher concentrations in fine sediment. Wave action, lake level fluctuation and ice movement stir up the arsenic-bearing sediment and suspend it in the water column. None of the alternatives being considered by the Corps in the RDEIS will change this fact of reservoir operations. The Corps' solution? Test and treat your drinking water, because the stirring of sediment in shallow areas is inevitable no matter what the Corps does. RDEIS Tables 5.4-1 and 7-4.1. This suggestion is hardly encouraging to the Cheyenne River Sioux Tribe, whose intake for its main public water supply system is located in the Cheyenne Arm of Lake Oahe.

Turning to mercury, we learn that this pollutant is ubiquitous in basin, but more of it was contributed to Lake Oahe from mining operations at the Homestake Gold Mine in the Black Hills. Although the Mine was declared a Superfund site and, thus, this point-source of contamination has been controlled, Cheyenne River sediment remains contaminated and continues to be deposited into the Cheyenne Arm. Corps 1994t, p. 32. While observed mercury levels are below EPA drinking water standards, the Corps advises that the presence of mercury and its variable concentration suggests that it should be monitored by municipalities which use

the lake as a water supply. U.S. Army Corps of Engineers 2000 Annual Report, RDEIS Appendix B, p. B-497. Fish tissue samples collected by the South Dakota Department of Game, Fish & Parks and the Cheyenne River Sioux Tribe in 2000 in the Cheyenne River, Moreau and Grand Rivers and these arms of Lake Oahe contained sufficient mercury to warrant a consumption advisory on fish caught in waters adjacent to tribal lands. As a result of the study, the South Dakota Department of Game, Fish & Parks was to extend the area of study to other portions of Lake Oahe in 2001.

As with Historic Properties, the Corps' identification and assessment of water quality problems in the Missouri River Basin have been less than stellar. "There is limited information regarding how water quality has changed since the construction of the Mainstem Reservoir System," says the Corps in Section 3.5.7 of the RDEIS. Although monitoring information is gathered by the Corps, the basin states, the U.S. Geological Survey and EPA, no monitoring program exists that integrates and evaluates all the information. RDEIS, pp. 3-36 and 3-44. "Spatial variability prevents our monitoring program from being a reliable indicator of the conditions which exist at the water supply intakes." RDEIS Appendix B, p. B-497. The Corps suggests that personnel responsible for water quality sampling should be updated in sampling techniques. RDEIS Appendix B, p. B-498. The Cheyenne River Sioux Tribe agrees.

The Tribe also agrees with the Missouri River Natural Resources Committee and the Biological Resources Division of the U.S. Geological Survey that *more science is needed*. The Missouri River Environmental Assessment Program is good start. RDEIS Appendix B, p. B-515. The purpose of the Program is to provide the scientific foundation for Missouri River management decisions. The Program hopes to expand current state and federal monitoring efforts and start new ones. It will establish a system-wide database containing information on fish, wildlife, habitat, water quality, and define the baseline of current river conditions. The Tribe is pleased to learn that the public as well as government agencies will have equal access to this database. The Environmental Assessment Program will also conduct long-term monitoring of river resources and focused investigations of the cause and effect relationship between river operations and the River's response. Appendix B, p. B-515, B-539. Of course, the Program is entirely dependent upon funding. Given the fact that tribal drinking water is at stake, funding of the Program has environmental justice implications.

Neither has the Corps developed viable mitigation measures for the water quality issues raised in the RDEIS. Although the Corps acknowledges that resuspension of arsenic and mercury from delta sediments and bioaccumulation of metals in fish tissues are concerns of tribes in the basin, RDEIS 7-33 and 7-34, the Corps' solution is NOT development of mitigation measures to address these issues. Rather, the Corps advises local governments to test and treat their water before drinking it.

Legal 38

Along the same lines, we are told in the RDEIS that the MCP leaves more water in the three upper mainstem lakes during drought and reduces lake level fluctuation. The increased volume improves water quality by diluting pollutants. The GP options will improve water quality even more because they will leave even more water in the lakes than the MCP. RDEIS p. 7-33. However, none of the alternatives limits the suspension of metals into the water column and the accumulation of toxic elements in fish tissue in Lake Oahe. RDEIS 7-33 to –34. Thus, neither the

CWCP nor any of the RDEIS alternatives being considered by the Corps mitigate the water quality issue of greatest concern to the Cheyenne River Sioux Tribe.

Legal 38 (con't)

The Corps is correct in stating that it is not the source of pollutants entering the Missouri River. Neither does it regulate water quality in the Basin. RDEIS p. 3-46. States, tribes and the federal Environmental Protection Agency (EPA) manage water quality under the Clean Water Act and Safe Drinking Water Act. That the Corps is not the source of water pollution or the regulator of water quality, however, does not relieve it of its responsibility to satisfy the environmental justice principles of Executive Order 12898 by identifying and mitigating water quality problems created or exacerbated by its management of the Missouri River Mainstem Reservoir System. So far, no solutions have been offered.

What about dredging and removing the contaminated delta sediments? What about erecting barriers (NAME?) to minimize lake level fluctuation in the deltas and prevent ice movement? What about covering the contaminated sediment with courser sediment? What about moving the intake for the Tribe's public water supply system away from the Cheyenne River delta?

ErSd 32
WS 6

HYDROPOWER

HPower 12

The Cheyenne River Sioux Tribe is very concerned about increased electricity rates for tribal members.

It is the Tribe's understanding that all of the alternatives being considered in the RDEIS process would increase overall hydropower economic benefits for the reservoir system. The drought conservation measures of the MCP and the GP options would leave more water in the reservoirs. This held-back water, known as "head," constitutes the capacity of the dams to produce hydropower. As the water is released and run through the turbines in the dams, power is generated. In this way, GP1528 would produce the greatest hydropower benefits. The CWCP produces the least. The other alternatives fall in between. The difference between GP1528 and the CWCP, however, is only 2.3%.

In spite of the fact that the MCP and GP options increase the *capacity* of the mainstem dams to generate hydropower, all of the GP options *decrease* hydropower *revenues*. How? By releasing water from the dams other than during summer and winter peak demand periods, when the hydropower is most valuable. The higher the demand for power, the greater its value. "Because demand is greatest in summer and winter, energy produced during these seasons is of greater overall value than energy produced in the spring and fall." RDEIS p. 3-122. When water is released from the dams other than during these summer and winter peak demand periods, revenue is lost. In this way, GP1528 and GP2028, the two GP options which release only enough water in the summer to maintain minimum navigation service, decrease annual hydropower revenue by an average of $8 to $9 million when compared with the CWCP. The GP options which split summer season releases and release the least amount of water during the summer peak demand period, GP 1521 and GP2021, have about a $30 million average annual adverse impact on hydropower revenues. RDEIS p. 7-228. These revenue losses translate into increased

electricity rates for customers who purchase power from the Pick-Sloan Project through the Western Area Power Administration (WAPA).

The magnitude of the hit caused by these increased rates depends on the amount of power a particular customer purchases from Pick-Sloan. WAPA estimates that basin Tribal Customers purchase 60 percent of their total power from Missouri River hydropower. As shown in Figure 7.10-22 in the RDEIS and Figure A-9 in the Tribal Appendix to the RDEIS, the increase in power costs incurred by basin tribes under the Gavins Point options ranges from two percent for GP1528 up to ten percent for GP1521 and GP2021. These increases will adversely impact affordable housing for tribal members.

COMMENTS OF THE CHEYENNE RIVER SIOUX TRIBE
DEPARTMENT OF GAME, FISH & PARKS

NOXIOUS WEEDS

In an effort to accommodate the paradigm shift from the multiple uses originally established for the Pick-Sloan Project to increased emphasis on environmental protection, the Corps has proposed alternatives aimed at protecting three threatened or endangered species -- the interior least tern, the piping plover and the pallid sturgeon. In 2000, the U.S. Fish & Wildlife Service issued a Biological Opinion (BiOp) for the Missouri River, which included a Reasonable and Prudent Alternative for operation of the Mainstem Dams to avoid jeopardy to the three species. The Gavins Point alternatives discussed in the RDEIS embody the Corps' efforts to incorporate the Reasonable and Prudent Alternative into the Master Manual.

The Reasonable and Prudent Alternative in the BiOp calls for flow enhancement, habitat restoration, creation and acquisition for the three listed species, and adaptive management. It also calls for unbalancing of the water levels in the three upstream reservoirs – Ft. Peck, Lake Sakakawea, and Lake Oahe. Unbalancing would consist of lowering the level of one of the three lakes by three feet to allow vegetation to grow around the rim. The unbalancing would rotate among the three lakes on a three-year basis. In the first year, the water level would be lowered in one of the lakes. The lowered level would be held constant the second year, and then raised back up to normal the third year. RDEIS p. 6-3.

This unbalancing plan is anticipated to greatly benefit the listed species inhabiting the reaches between the three lakes, as high flows are good for native river fish and for clearing vegetation from islands and sandbars. The subsequent low flows will expose the cleared islands and sand bars, which the least tern and piping plover use for nesting. Lake fisheries will also benefit, as the vegetation growing on the lake perimeters for two years will be inundated the third year, becoming spawning and hiding habitat for young-of-the-year fish.

Unfortunately, little mention is made in the RDEIS of the *type* of vegetation that will grow on the lake perimeters when unbalancing kicks in. Noxious weed infestations have reached crisis proportions on Cheyenne River Sioux Tribe reservation lands. Canada thistle has exploded within the past two years, and leafy spurge has been reported in several new locations. Noxious weeds are beginning to take over the Lake Oahe shoreline, posing a serious threat to native

grasses. Even without unbalancing, wetlands at Oahe are flooded and emerge as lake levels fluctuate. RDEIS p. 3-70. The water disperses seeds. Canada thistle predominates in these emergent wetlands. When working to establish habitat on Corps land within the Reservation, tribal Game Fish & Parks employees encounter Canada thistle nearly 75% of the time when the soil is disturbed. The Tribe's Game, Fish & Parks, Prairie Management, the BIA and several South Dakota counties consider Lake Oahe to be the primary source of Canada thistle, which is a water loving plant.

Cattle production is the prime source of income for the Cheyenne River Sioux Tribe. Noxious weeds are extremely detrimental to this agricultural economy. They substantially reduce the productivity of grazing lands by competing with valuable native grasses. This reduction in range quality adversely impacts cattle production. The Cheyenne River Sioux Tribe is working with Dewey, Ziebach, and neighboring counties to eradicate noxious weeds. Control programs are costly.

For years, the Corps has funded spraying of noxious weeds on state lands on the shoreline of Lake Oahe. However, Reservation lands have been largely ignored. Unless the entire shoreline is addressed, the battle with noxious weeds will be lost. The Cheyenne River Sioux Tribe is very concerned that unbalancing will exacerbate the serious noxious weeds problem along the shores of Lake Oahe, with potentially devastating effects on the Reservation.

Other 194

MISCELLANEOUS COMMENTS AND QUESTIONS

On p. 3-6 of the RDEIS, current land uses on the Cheyenne River Sioux Reservation are described. The Tribe wishes to make a correction to this description, which indicates that grazing is a minor land use. To the contrary, grazing is the most predominant land use on the Reservation. Roughly 80% of the Reservation 2.8 million acres are utilized for grazing.

Other 225

Page 3-56 of the RDEIS states, "Lake Oahe is used as a water supply by Fort Yates, North Dakota, and Mobridge, Wakpala, Gettysburg, Eagle Butte, Swiftbird, Blackfoot, Promise, White Horse, Green Grass, Bear Creek, LaPlante, Dupree, Iron Lightning, Faith, Bridger, Cherry Creek, Red Scaffold, Thunder Butte, Red Elm, and Lantry, South Dakota, as well as some individual cabins." Why are Takini and WEB Water not included? The WEB water intake is near Akaska, South Dakota. To our knowledge, it serves several East River areas, including Ipswich and Aberdeen, South Dakota.

Other 226

With regard to Chapter 3, Section 3.6 of the RDEIS, the Cheyenne River Sioux Tribe's Game, Fish & Parks Department has the following questions and comments:

1. What was mapped for riparian and wetland areas pertaining to the Cheyenne River Sioux Reservation?

2. Are noxious weed infestations in the wetland and riparian areas mapped?

WRH 21
Other 227

3. We are concerned about the negative effects of fluctuating lake levels on Cottonwood trees. Little to no age structure or recruitment is occurring within the existing stands. When the lake level is low, young cottonwoods come in very thick. When the level rises, these young trees are inundated and die. This precludes diverse age classification. When the older trees die, no younger trees will be there to replace them. These cottonwoods provide habitat for bald eagles, which are culturally significant to us as native people. Destruction of the cottonwoods along the River flyway will result in reduction or elimination of the eagle from the Cheyenne River Sioux Reservation. This would be a great loss to the Lakota people.

Other 229

With regard to other sections of Chapter 3 of the RDEIS, the CRST Game, Fish & Parks Department has the following comments:

1. At p. 3-109, the RDEIS states, "The Cheyenne River Reservation is located adjacent to Lake Oahe on the *right* bank of the lake." The Reservation is located on the *left*, or west, bank of Lake Oahe.

Other 230

3. On p. 3-134, the RDEIS refers to two existing recreational sites and four future recreational sites on the Cheyenne River Sioux Reservation, for a total of 1,123 acres. The Tribe requests amendment of the language of the sentence to include a reference to the fact that the two existing recreational sites are considered primitive.

Other 231

1. On p. 3-151, the RDEIS states, "The Mainstem Reservoir System is a valuable source of jobs, recreation, hydropower, transportation of goods, and water supply for powerplants and domestic, agricultural, and industrial uses." Other than electricity, the Mainstem Reservoir System has not constituted a valuable source of the listed benefits to the Cheyenne River Sioux Tribe. Recreation epitomizes the unbalanced distribution of benefits generated by the Mainstem Reservoir System. In the absence of the anticipated irrigation development on the Mainstem System, recreation has become a primary use. Of the 52 recreation sites on Lake Oahe, only six are tribal, only two of which belong to the Cheyenne River Sioux Tribe, and those two are primitive - undeveloped. Further, any attempts by the Tribe to share in the recreation benefit are met with jurisdictional challenges by the state of South Dakota. In short, the Cheyenne River Sioux Tribe does not benefit economically from recreation on Lake Oahe. Distribution of the recreation benefit is unbalanced, as is distribution and enjoyment of the other benefits and uses of the Mainstem Reservoir System whose praises are sung in the RDEIS.

Other 232

In the discussion of tern and plover habitat for Four Tribal Reservations in Section 5.6.1 of the RDEIS, p. 5-49, no mention is made of lake habitat for these birds. The Cheyenne River Sioux Tribe's Game, Fish & Parks Department believes that lake habitat for the tern and plover should be included in the discussion of the alternatives, particularly if the U.S. Fish Wildlife Service intends to designate the shoreline of Lake Oahe as critical habitat for the piping plover. The Tribe's Game, Fish & Parks Department has been surveying tern and plover habitat and conducting adult census on Lake Oahe since 1994. Game, Fish & Parks would be happy to provide the data it has compiled to the Corps. GF&P does not believe a sound decision can be made concerning tern and plover habitat in the Missouri River Basin without knowing how the proposed alternatives will benefit or impact lake habitat for these listed species.

EnSp 20

T0400001

FORT PECK TRIBES

Assiniboine & Sioux

November 27, 2001

U. S. Army Corps of Engineers
Northwest Division
12565 West Center Road
Omaha, Nebraska 68144-3869

ATTN: Missouri River Master Manual RDEIS

Dear RDEIS Staff:

These comments on the Biological Opinion in support of the RDEIS for the Missouri River Master Manual 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 over a distance of 141 miles, between river miles 1621 and 1762. Our interest in this matter is significant. Approximately 75% of the north or left bank of the Missouri River between Fort Peck Dam and the backwaters of Lake Sakakawea near the border with North Dakota lie within the Fort Peck Indian Reservation in the reach to be affected by Master Manual operating procedures, including testing and future operations to generate a spring rise.

The Biological Opinion on p. 172 only addresses Indian water rights as follows:

> *In United States v. Winters, 207 U.S. 564 (1908), the United States Supreme Court recognized the doctrine of reserved water rights, which assures that Native American lands (and other public lands set aside by the government for a particular purpose) will receive sufficient water to fulfill the purposes of the reservation. Most water rights in the western United States (which includes all Missouri River Basin states, except Minnesota, Iowa and Missouri) have priority based on when water was first put to a beneficial use such as agriculture. However, Federal reserved water rights for Native American reservations and other federally-reserved lands have priorities dating back to at least as early as when the reservations were established (and, in the case of Native American reserved water rights, possibly earlier), even if water use on the reserved lands begins at a much later date. As many as twenty-eight tribes claim water rights to the Missouri River, and in most cases these claims precede the water rights of any non-Indians. Although Congress has consented to the adjudication of Native American reserved water rights in state courts in general stream adjudications, reserved rights are not subject to state law and can be adjudicated in Federal court.*
>
> *Many reservations along the Missouri River now use or have plans to use Missouri River water for drinking water and irrigation. The Fort Peck tribes have applied for a Federal appropriation for a municipal, rural, and industrial project in Montana that will extract approximately 4,000 acre-feet of water annually from the Missouri River.*

Poplar, Montana 59255 P.O. Box 1027 (406) 768-5155

The water rights of the Fort Peck Assiniboine and Sioux Tribes totally near 1 million acre feet annually from the Missouri River have been settled by compact with the State of Montana as of 1985 with a priority dating as early as 1888. The Biological Opinion does not address those water rights in the baseline analysis; and, therefore, the Biological Opinion is deficient.

Legal 39
Other 165

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...*

Legal 40
Other 165, 277
Tribal 21

The environmental baseline for ESA Section 7 consultation on the Missouri River does not include the water rights of the Fort Peck Assiniboine and Sioux Tribes as settled by Compact with the State of Montana and is therefore in need of revision.

Please provide the name of a Corps of Engineers' and U. S. Fish and Wildlife representatives responsible for this matter and a time frame for response to our concern. The Tribes are willing to correspond and/or meet with representatives of the Corps of Engineers and USFWS at any time to clarify our concerns and the need for a proper resolution.

Sincerely,

Arlyn Headdress, Chairman
Fort Peck Assiniboine and Sioux Tribes

cc The Honorable Conrad Burns
The Honorable Max Baucus
The Honorable Dennis Rehberg
The Honorable Judy Martz
Secretary Gale Norton
Rick Knick

T0400002

FORT PECK TRIBES

Assiniboine & Sioux

February 27, 2002

VIA FACSIMILE & U.S. MAIL
Carl A. Strock, Brigadier General, Division Engineer
U.S. Army Corps of Engineers, Northwestern Division
Missouri River Master Manual RDEIS
12565 West Center Road
Omaha, NE 6814403869

Dear Brigader General Strock:

The Assiniboine and Sioux Fort Peck Tribes ("Tribes") hereby present written comments to the U.S. Army Corps of Engineers' ("USACOE") Revised Draft Environmental Impact Statement ("RDEIS") that was published on August 31, 2001.

The Tribes are extremely troubled by the changing face of the Missouri River and its precious ecosystem. The Tribes feel burdened with the challenge of restoring and protecting our reach of the Missouri River, when others are responsible for its current, degraded state. There is no question that federal water operations on the River have adversely impacted the environment and the River's ecosystem. The increasing demands on water resources and the resistance to conserve water also greatly contribute to the problem. The Tribes also fear that when we seek to exercise our senior water rights, we will be viewed as contributing to the problem instead of legitimately using water in a conservative manner to meet the needs of our people.

The Tribes are encouraged that the federal government is attempting to address these problems. However, as a general matter, the Tribes feel that the RDEIS does not provide a sufficient response. First, the Tribes found it extremely difficult to evaluate the RDEIS because it lacked a preferred alternative. This approach is contrary to NEPA and its regulations which require the federal agency to identify a preferred alternative or alternatives. 40 C.F.R. 1502.14. Second, the alternatives in the RDEIS contain serious information gaps that make it impossible to render an opinion. Likewise, the USACOE's model is deficient in that it does not include important data regarding the Tribes' reach of the river. The RDEIS also fails to consistently address mitigation measures, and furthermore, fails to specifically discuss impacts to tribal land use plans and pplicies, any conservation potential under each alternative, and impacts to historic and cultural resources on tribal lands. The Tribes are also greatly troubled by the lack of an analysis of impacts to water quality, especially since the Tribes have EPA-approved water quality standards under the Clean Water Act. The Tribes also found other issues, such as erosion, sedimentation, groundwater impacts, and baseline considerations, absent from the analysis.

Other 148
Tribal 3
CR 7
ErSd 22

These concerns are addressed in greater detail in the attachment prepared by the Tribes' Office of Environmental Protection. The Tribes request that this cover letter and the attachment be made a part of the administrative record and that the USACOE provide a response to these documents, as required under the NEPA process. The Tribes also request that government-to-government consultations continue to address the specific concerns raised herein to ensure that

Tribal 21

Poplar, Montana 59255 P.O. Box 1027 (406) 768-5155

the Tribes' trust resources are not adversely impacted.

Your consideration of the Tribes' comments is greatly appreciated.

Sincerely,

Arlyn Headdress
Chairman
Fort Peck Assiniboine and Sioux Tribes

cc: Jack McGraw, Regional Administrator, Region 8 EPA
Ralph Morgenwech, Regional Office, USFWS
Keith Beartusk, Director, Rocky Mountain Regional Office, BIA

US Army Corps of Engineers, Missouri River Revised Draft Environmental Impact Statement
Comments for the Fort Peck Tribes
prepared by
the Office of Environmental Protection
February 25, 2002

The U.S. Army Corps of Engineers ("USACOE") set forth fourteen parameters for impacts in the Revised Draft Environmental Impact Statement (RDEIS). Of the fourteen parameters, the USACOE claims to have examined nine parameters for the Fort Peck Indian Reservation. These fourteen evaluated impacts are wetland habitat, riparian habitat, 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, flood control, water supply, hydropower, recreation, navigation, and historic properties. The nine impacts evaluated for Fort Peck include wetland habitat, riparian habitat, tern and plover habitat, river coldwater fish habitat, river warmwater fish habitat, native river fish physical habitat, flood control, water supply, and recreation.

The Missouri River reach extending from River Mile 1766 to River Mile 1630.4 serves as the Reservation's southern boundary and is the longest stretch of river located on Indian lands within the action area. Fort Peck's Reservation is located at the top of the basin and hence, is the first to be impacted by any modified flow regimes proposed by the USACOE. The Reservation is downstream of the first dam completed on the Missouri River System - the Fort Peck Dam.

Recently, American Rivers identified this stretch of the Missouri River as one of the most endangered river reaches in the United States and the State of Montana listed this reach as impaired on its 303(d) list. Pallid sturgeon, the piping plover, and the interior least tern are listed as endangered species that inhabit this stretch. Other species of concern on the Reservation include bald eagles, whooping cranes, paddlefish, sturgeon chub, and sicklefin chub.

The RDEIS laid out the original alternatives in the Draft EIS for the Master Manual, submitted alternatives from different stakeholders in the basin from the Preliminary Revised Draft EIS (PRDEIS) circulated in 1998, and new alternatives derived from the Biological Opinion submitted by the US Fish and Wildlife Service (USFWS), which raised management concerns for several endangered species including those listed above. The Tribes found that all of the alternatives were problematic. The only alternative which resulted in the least adverse impacts to the Tribes appears to be GP 1528, but given information gaps the Tribes have been unable to fully evaluate this alternative at this time.

Below is a short summary of these alternatives, followed with the Tribes' substantive comments to these alternatives.

ORIGINAL ALTERNATIVES

Original alternatives evaluated in the RDEIS included the Current Water Control Plan (CWCP), navigation service criteria, nonnavigation service levels, flood control constraints, changed service levels during the navigation season to benefit fish and wildlife, intrasystem regulation of storage water among the upper three lakes, and release modifications at Fort Peck Dam to benefit downstream endangered species.

SUBMITTED ALTERNATIVES

Submitted alternatives include the Missouri Levee and Drainage District (MLDDA), the Missouri River Basin Association (MRBA), American Rivers (AR), Missouri River Natural Resources Committee (MRNRC), Missouri Department of Conservation (MODC), and the USFWS's Draft Biological Opinion (BIOP) and FWS30 . The American Rivers and Missouri River Natural Resources Committee recommendations were combined to form the ARNRC option. The BIOP and FWS30 are nearly identical except for the spring rise release target flows from Gavins Point Dam.

Differences in these submitted alternatives reflect the differences in the basin interest groups. The MLDDA is focused on reducing flood impacts, managing interior drainage, and high groundwater impacts on the farms field along the lower portion of the Lower River and is opposed to raising the level of Lake Oahe and overall asks for a increase in the annual operating pool for flood control from Gavins Point as well as opposing any plan to reduce flows to minimum flow for navigation.

The MRBA included additional storage in the upper reservoirs, reduction in navigation based on checks at critical periods throughout the year, unbalancing of the upper reservoirs, trial fish enhancement releases from Fort Peck Dam and Gavins Point Dam, habitat acquisition and enhancement, additional data acquisition with review from the National Academy of Science.

The ARNRC alternatives include increased spring flows and reduced summer flows from Gavins Point Dam, spring rise from Fort Peck Dam, stream bank erosion monitoring before, during and after spring rise, unbalancing of the three upper lakes, and adaptive management based on governmental monitoring and assessment programs.

Closely following the Modified Conservation Plan, the MODC alternative calls for unbalancing the upper reservoirs, a spring rise for Fort Peck Dam, increase storage in the reservoirs, and a flat release from Gavins Point from August 1st to September 15th of 41 kcfs. When compared to the Modified Conservation Plan, the major difference is the flat release occurs continually downstream from August 1st to August 20th at 34.5 kcfs.

BIOP and FWS30 include adaptive management, flow enhancement which includes a

spring rise from Fort Peck Dam, unbalanced intrasystem regulation, habitat restoration/creation/acquisition and also include releases from Gavins Point of increased spring rise of 17.5 kcfs over full service navigation and a reduced summer flow to 21kcfs. The FWS30 has these same provisions except it call for 30 kcfs spring rise from Gavins Point over full service navigation.

NEW ALTERNATIVES

The Modified Control Plan (MCP) would include an adaptive management process, increasing minimum storage levels in the upper lakes to 43 MAF(million acre feet), applied navigation criteria based on the storage at strategic points during the year, intrasystem unbalancing of the upper three reservoirs, spring rise from Fort Peck, flat release from Gavins Point of 34.5kcfs.

The Gavins Point (GP) release alternatives are the same as the MCP with the exception of changes in releases from Gavins Point Dam. These options are GP 1528, GP 1521, GP 2021, and Gp2028. Under the GP options, the spring rise would occur every years between May 1 and June 15, as conditions allow. The potential starting point for the spring rise under the GP alternatives is 15 kcfs above full navigation service releases. The rise is intended to provide a spawning cue for the pallid sturgeon.

Summer flows would be lower every year as conditions allow under the GP options. The lower summer flows would occur on the lower river from mid June to September 1. These summer low flows range from 28.5 kcfs to 21 kcfs. The 28.5 kcfs would allow for reduced navigation services. The USACOE believes the GP options represent a reasonable compromise for the operation of the Mainstem Reservoir System (RDEIS Master Water Control Manual, Missouri River, August 2001, Volume 1: Main Report, Pp 6-4, 2nd paragraph).

TRIBES' SUBSTANTIVE COMMENTS

Adaptive Management Strategy

The Tribes support an adaptive management approach; provided, however, that the USACOE develop an accurate baseline for the Fort Peck Indian Reservation as described in Attachment A. This baseline assessment requested by the Tribes in October of 2001 was in response to the proposed spring rise from Fort Peck Dam, and is an element of every alternative except the CWCP and the MLDDA. The Tribes request representation on the Federal team. In addition, scientific interests should be participants in the team with expertise in the following areas: biology, water quality, geomorphology, riparian and wetland ecology. The Tribes further request that the team develop ongoing monitoring and analysis of erosion, deposition, groundwater levels, water quality, water supply, native versus non-native vegetation, and any other trust resources along the Fort Peck Reservation's reach of the Missouri River.

Other 299

Moreover, in addition to participating on the Federal team, the Tribes request that the federal government engage in government-to-government consultation with the Tribes in separate meetings, specifically with the Fish and Game Departments, Assiniboine and Sioux Rural Water System, and the Environmental Protection Department, to discuss and analyze the results of the Teams's activities, any proposed changes to the Annual Operating Plan, and any impacts to the Tribes' trust resources.

Tribal 21

The Tribes believe that the USACOE should be the Team Leader for the Adaptive Management Planning process and should secure funding to ensure broad participation by all, and guidance from expertise in the areas of large river ecology, economics and water supply, to name a few. The plan outlined in the RDEIS is a first step, but it is evident that an effort to obtain funding for this process is essential.

Wetland and Riparian Habitat

The USACOE evaluated the impact to wetland and riparian habitat only in terms of lost acreage. In this regard, the parameter is limited in scope. The current model does not address geomorphic activities. In addition, the current model, which uses the 100 year hydrology, would not reflect any new wetlands and riparian habitat that would be created under the new flow regimes. Given this lack of information, the Tribes are unable to completely evaluate any of the alternatives. The Tribes have identified deficiencies in the existing baseline of the USACOE and have identified a need for (1) a determination from aerial photography and other relevant information of the amount of wetland lost on the Reservation since the construction of Fort Peck Dam and (2) a plan for mitigation. This is required for adaptive management.

WRH 9

Cottonwood regeneration has been a high priority for the Tribes. Indeed, the Tribes are considering the option of planting in the new riparian corridor. Partial inundating of the cottonwood seedlings is important to wipe out competing vegetation. Although the riparian impacts developed by USACOE show a zero percent change from the CWCP, the Tribes question this finding and request a determination of the amount of cottonwood forest either damaged or lost since the construction of Fort Peck Dam. Furthermore, as stated above, the Tribes have identified deficiencies in the existing baseline of the USACOE and have identified a need for (1) a determination from aerial photography and other relevant information of the amount of cottonwood forest lost on the Reservation since the construction of Fort Peck Dam and (2) a plan for mitigation This is required for adaptive management.

WRH 20

The wetlands impacts under the submitted alternatives range from a negative 14% impact, under the BIOP alternative, to a positive 6% impact, under the MRBA alternative, when compared to the CWCP. For the selected alternatives, all of the GP options result in a negative impact when compared to the CWCP ranging from negative 14% to negative 7% under the GP 1528 and GP2028 respectively. We assume this loss is to increased water levels. However the MCP has a positive impact of 3%.

Loss of wetland habitat in a river system has impacts to the water quality and aquatic systems. Therefore, none of the GP alternatives, the MLDDA, BIOP or FWS30 would be acceptable. The ARNRC, MRBA, and MCP have small but positive effects on the wetland resource. However, the model cannot account for any newly created wetlands and therefore makes it difficult to support any of the listed alternatives. WRH 20

In reality, the Tribes still suffer effects that result from the CWCP to begin with. The Fort Peck reach, which has the most riparian habitat of any Indian Reservation in the action area, also is only reach which would see a decrease in riparian vegetation under all of the submitted and selected alternatives except the MLDDA. With the maturity of the present cottonwood forest and the lack of regeneration, significant decline in the cottonwood forest and interrelated resources can be expected in the future. Thus, the Tribes are reluctant to endorse any alternative proposed by the USACOE since none of them provide a net benefit result to the Tribes' wetland and riparian habitat. WRH 11

Tern and Plover Habitat

The habitat parameter is limited in scope and makes it difficult for the Tribes to endorse any of the proposed alternatives. The Tribes have an interest in this parameter since twenty-two percent of the Tern and Plover habitat is located on the Fort Peck reach. The Tern and Plover model simulates the vegetation encroachment and removal process as river flows and associated stages rise and fall in four river reaches. Unfortunately the model does not simulate the geomorphic process of island and sandbar building that takes place at very high flows with a relatively long duration, such as a spring rise. EnSp 22

Under the GP options, habitat for the terns and plovers is reduced along the Reservation segment of the river, dropping from the current 50.4 acres to a range of 27.4 acres to 36.5 acres. We assume this loss is to increased water levels. The Tribes are unclear as to why the USFWS advocates changes in releases from Gavins Point to protect habitat below that dam which also result in negative impacts to the habitat below Fort Peck Dam. Based on discussions with the USFWS and after review of the RDEIS, populations of these birds in the Fort Peck reach are quite low compared to the Garrison reach and the Gavins Point reach, both of which have the majority of the habitat downstream, roughly 62 %. The increases in habitat acreage, approximately 137.8 acres or 77%, from the GP1528 option below Garrison and Gavins Point far exceed the loses below Fort Peck Dam. EnSp 23

River Coldwater and Warmwater Fish Habitat

The coldwater fish habitat parameter evaluates the amount of water released from the upstream dam and the water temperature. Generally, higher lake levels and higher releases result in more miles of coldwater habitat downstream from dams. All of the percent changes are positive for any of the alternatives and is much high for those alternative which keep additional water in the reservoirs for drought conservation. However, the model does not address spillway flows

expected from the spring rise which are higher in temperature. Under the GP 1528 option, modeled increases in the coldwater fish habitat increase by 11.1 miles or 7.9% compared to the CWCP, which is the lowest amount for any of the GP options. However, the lowest increase in coldwater fish habitat is the MRBA and MLDDA.

Under drought conditions of the late 1930s and early 1940s, the GP1528 option maintains higher habitat values during this period than the remaining alternatives. We assume this increase is due to increased water levels. However, coldwater fisheries in the river reach have propagated since the construction of the dam due to the reduced water temperatures and reduction in sediments.

Warm water fish habitat is based on total river miles available and has an inverse relationship to the coldwater fish habitat values. The higher the coldwater habitat mileage, the lower the warmwater habitat mileage. The model decreases the number of miles available for warmwater fish habitat, thereby negatively impacting warm fisheries. The Tribes have an interest in impacts to warmwater fish habitat since the Fort Peck reach below Fort Peck Dam has more than 60% of the warmwater fish habitat. All of the alternatives which call for a spring rise from Fort Peck Dam should be generally higher than presented because there is a warmer water release over the spillway. However, the USACOE's model does not include these spillway releases. Based on the available model, under the GP 1528 option, warmwater habitat would be reduced by 17%, just the opposite of the coldwater habitat changes, but to a greater degree. Increased releases from the dam would reduce the warmwater stream while increasing coldwater. The Tribes find this result disturbing and worthy of further evaluation. Fish 6

In order for the Tribes to make an educated evaluation of the alternatives impact to fisheries, a more specialized model needs to be developed along with government-to-government consultation with USACOE and the USFWS. At best, the model is convoluted, at worst, it's completely incorrect regarding these parameters. Therefore the Tribes are unable to endorse any of the alternatives presented for consideration. Fish 6

Native River Fish Physical Habitat

The model for native river fish was based on how the velocity and/or depth distributions match "natural" flow condition based on pre-Mainstem Reservoir System channel conditions. In April, May and June, the habitat value is dependent on the potential for overbank flooding (increased river levels due to the spring rise). Within the Fort Peck Reservation, the MCP and four GP option all increase the physical habitat index values for native river fish. The greatest index value increases occur under the GP 2028 and GP 1528 options.

It is important to remember that some of the native fisheries in the Fort Peck Reach are currently in a downward trend for population numbers. The sturgeon chub and sicklefin chub are considered species of special concern by the USFWS. Other sport species that are suffering

declines in numbers include the sauger and the paddlefish. The Tribes support any alternative which protects native river fish habitat, and especially any alternative which enhances that habitat. All of the alternatives except the MLDDA alternative increases native river fish habitat although most of the increases are only by one to two percent. The ARNRC increases the habitat by five percent.

Water Supply, Flood Control, and Recreation

All of these parameters are influenced by river levels. Although no parameter is specifically addressed by river levels except possibly recreation, the model seems to be reflecting a higher river level. Currently, there are 109 water supply intakes and intake facilities located on the Missouri River serving the Fort Peck Reservation. All of the alternatives except the MLDDA and MRBA increase water supply benefits. The GP options increase water supply benefits to Fort Peck reach by 14 %, or a dollar amount of $30,000 annually. The Tribes request that any purported benefit of 14% or $30,000 annually needs to be weighed against any negative changes in erosion, sediment concentrations, river bed aggradation and degradation, and habitat Flood control results in a negative 2% impact, the result of increased water levels, mostly due to the spring rise, amounting to roughly $20,000 in losses along the Fort Peck Reach.

ErSd 22
Hydro 32
FC 9

Under the GP1528 option, recreation appears to have an average eight percent increase in benefits, resulting in an increase of $30,000 for the entire reach. However, there are only three boat ramps in this reach and only one boat ramp along the entire reach that borders the Reservation. Assuming that boat ramp access directly relates to the recreation dollar amount, the Tribes could expect a $10,000 increase in recreation. In order to reap additional benefits, the Tribes would need to install additional boat ramps on the Reservation. The Tribes are currently working to develop additional access sites along the Missouri River.

Rec 27

Other Parameters

The Tribes believe that the RDEIS impact evaluation is not comprehensive regarding the Fort Peck Reservation's reach on the Missouri River. Water quality, sedimentation, erosion, ice processes and cultural and historic properties need further evaluation by the USACOE. Obviously historical and cultural properties are important to the Tribes and the lack of an evaluation of this parameter is significant. Every effort should be made to make some kind of evaluation of the alternatives on this parameter.

Other 148
CR 12,15,17

Water quality is extremely important to the Tribes, especially since the Tribes have their own water quality standards and the listing of Fort Peck's reach on the State's 303(d) list. The RDEIS does not sufficiently evaluate water quality impacts. Although the RDEIS evaluates alternatives for mercury and metals impacts and shows a negative impact for the alternatives for aquatic life and a positive impact for habitat relating to thermal water quality standards, it

WQ 19

provides no numeric values for these impacts. In addition, there is no substantive discussion in any of the alternatives regarding how future water operations and uses on the River will impact water quality. The Tribes request government-to-government consultation with EPA and USACOE on this issue to determine water quality impacts once and for all.

WQ 19
Other 288

The Tribes believe that the State of Montana and irrigators along the Fort Peck reach are very concerned about erosion and sedimentation from the spring rise. The Tribes share these concerns and have also informed the USACOE about the need for mitigation of impacts to intake sites on the Reservation. Again, the Tribes request a geomorphologic study of the river channel, similar to those being conducted between the USACOE and the State on the Yellowstone River, to determine impacts to the Reservation's resources. In addition, the State has requested a maximum 9000 cfs winter release for the Fort Peck Dam in order to stabilize banks below Fort Peck Dam upset by ice erosion. Based on the draft results of the ice study for this segment of the river, the Tribes would support that release ceiling.

Hydropower and Navigation

Although the Fort Peck Reservation is not directly involved in hydropower or navigation, it is important to consider how these economic activities impact the Tribes. Hydropower is of particular interest to the Tribes due to the fact that the Tribes have an allocation of Pick-Sloan power for both the Assiniboine and Sioux Rural Water System and at-large uses throughout the Reservation. Of all the alternatives, the greatest hydropower benefits occur under the GP 1528 option (RDEIS August 2001, 7-144 paragraph 2). Average annual impacts to Western Area Power Administration (WAPA) for meeting Pick-Sloan firm power commitments increase by 8.6 million dollars compared to the CWCP. As increased reliance on Federal power goes up, those power suppliers that have a higher percent of Federal power are also affected. If the amount of electricity generated drops under any of the alternatives, power companies would be forced to fill their electrical obligations with higher electrical contracts, which would increase rates to individual households on these systems.

HPower 12

Navigation economic impacts would be reduced under all of the alternatives presented for review. Of the GP options, the GP1528 option exhibits the mildest impact to navigation reducing the economic impact by 1.66 million dollars or twenty four percent while the GP1521 option reduces navigation benefits by 5.98 million dollars or eighty six percent. The GP1528 option provides for 86 full or partial service years over a 100 year period. Although navigation does not directly effect the Tribes, all of the alternatives are tied to navigation service criteria. The MLDDA provides the highest benefits of all the alternatives to navigation, but provides very little change to any of the parameters evaluated for the Fort Peck Reach, as it is closely tied to the CWCP.

Nav 30

Summary

In sum, the Tribes believe that there are numerous problems with the majority of the alternatives presented, that there are some positive aspects that are mostly found in GP 1528, but that the Tribes cannot endorse any specific proposal at this time because of model deficiencies, the absence of certain important parameters, and the lack of a comprehensive evaluation regarding impacts to the Tribes' trust resources.

Tribal 22

ATTACHMENT A

October 4, 2001

U. S. Army Corps of Engineers
Northwest Division
12565 West Center Road
Omaha, Nebraska 68144-3869

ATTN: Missouri River Master Manual RDEIS

Dear RDEIS Staff:

These comments on the "Fort Peck spring rise" 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 over a distance of 141 miles, between river miles 1621 and 1762. Our interest in this matter is significant. Approximately 75% of the north or left bank of the Missouri River between Fort Peck Dam and the backwaters of Lake Sakakawea near the border with North Dakota lie within the Fort Peck Indian Reservation in the reach to be affected by testing and future operations to generate a spring rise.

The Tribes have previously corresponded with Becky Latke relative to the "mini' and "full" tests to ensure preservation and protection of our valuable Missouri River and its valley. Please review that correspondence, which has been largely ignored. We have been advised recently by the Corps' staff on the testing that they really do not have "jurisdiction" over the matters raised by the Tribes with them nearly a year ago, but that Division has jurisdiction over all matters except the "mini" test. It would have been helpful to have known earlier. Until recently, the staff dedicated to the testing dealt with us as if they were responsible for responding to our concerns.

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.

Tribal 21

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, the Corps of Engineers is respectfully requested to comply with Executive Order 13175 and to refrain from testing. Any testing is opposed until our concerns and requests are addressed as set forth below.

Legal 41

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, 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 through funds available from the Corps of Engineers or federal entities other than the entity established for the operation, maintenance and replacement of the Fort Peck Reservation Rural Water System.

Legal 42
Other 82,83
WS 7

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 of 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, their lands and their resources of 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 future operational changes on aquatic habitat, riparian habitat (with special attention on our cottonwood forest), 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 Pick-Sloan and, more specifically, on the resource pool from which the Fort Peck Assiniboine and Sioux Tribes will receive federal power at preference 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.

HPower 14

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 banks, 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. Independent investigations have been undertaken by the tribes on the increase in suspended sediments that may be expected as a result of the spring rise. Those investigations conclude that a 7% increase in suspended sediment can be expected with a change in flows from the historic pattern to the proposed pattern with spring rise. This is of significant concern and inter-relates with aggradation, degradation, bank erosion, riparian habitat and other resources. The Tribes are willing to share this analysis with the Corps of Engineers given a showing of attention to our concerns.

Please provide the name of a Corps of Engineers representative responsible for this matter and a time frame 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,

_____
Arlyn Headdress, Chairman
Fort Peck Assiniboine and Sioux Tribes

cc The Honorable Conrad Burns
The Honorable Max Baucus
The Honorable Dennis Rehberg
The Honorable Judy Martz
Secretary Gale Norton
Rick Knick

T0500001

FORT PECK ASSINIBOINE & SIOUX TRIBES
NORMAN HOLLOW RESOURCE CENTER
603 Court Avenue
PO Box 1027
Poplar, Montana 59255

OEP-4163

Carl A. Strock, Brigadier General,
Division Engineer
U.S. Army Corps of Engineers,
Northwestern Division
Missouri River Master Manual RDEIS
12565 West Center Road
Omaha, NE 6814403869

February 28th, 2002

TO: Missouri River Master Manual RDEIS Project Manager
FROM: Michael B. Jandreau, Chairman, Lower Brule Sioux Tribe
SUBJECT: Comments of the Lower Brule Sioux Tribe in response to the MRRDEIS

Dear RDEIS Project Manager:

By this letter and its attachments, the Lower Brule Sioux Tribe formally submits comments on the Revised Draft Environmental Impact Statement for the Master Manual (RDEIS) for inclusion in the record.

Other 270

The Lower Brule Sioux Tribe, after extensive review finds the RDEIS is completely inadequate in addressing major environmental issues. The document, as the original DEIS, contains information that is completely insufficient, and offers no mitigation, beyond the six, (6) alternatives presented for discussion. Those alternatives specifically address the USFWS Biological Opinion and even then in an inadequate manner. Those six alternatives have very little prominence in the issues faced on the upper river. Other environmental issues of critical concern are addressed in a minimal fashion with outdated, inaccurate data – or simply not addressed at all.

The Lower Brule Sioux Tribe has spent several years pro-actively attempting to work with the ACE Omaha District and ACE HQ in Washington, DC, to address major environmental issues faced on the River. Those issues are specifically noted in Attachment 1 to this letter. This work has resulted in specific documents and processes which create the foundation for long term partnership with the ACE in addressing and creating resolution to these most critical problems, many of which are the cause for the update of the Master Manual. These documents and processes are the long-term mitigation for operation and planning on the River, and yet, are not even mentioned in the RDEIS.

It is extremely frustrating to continually devote extraordinary staff time and resources to attempt to engage the ACE in a working relationship, the fruits of this time and energy being the creation of workable documents and processes which provide for interaction

over the long term. Only to have these documents disappear in final draft form, into the dark reaches of a federal file cabinet.

Attachment 1 specifically reviews all of the issues that are inadequately addressed in the RDEIS, or issues that were not addressed at all. Attachment 1b reviews existing documents that have been created to address and mitigate these issues. None of the documents noted in Attachment 1b are addressed or mentioned in the RDEIS.

In light of the fact that this RDEIS is a second attempt to correct the inadequacies of the original draft, and that it has not done so successfully. The LBST respectfully requests that any final selection resulting from this RDEIS, be an interim document for a period of 3 to 5 years. This time frame would allow some flexibility in addressing some of these long-term environmental issues and provide the time to create/finalize on-going mitigation processes, as well as reviewing the benefits and impacts that the selected "Alternative" will have.

Other 46

We request that the COE incorporate these comments into the Final EIS and the Record of Decision (ROD). We further request that you include the Draft MOA that was submitted to the COE 2/01, as well as the existing CRMPs that were developed for the Lake Sharpe and Lewis and Clark Projects in the Final EIS and ROD as well.

Thank you.

Sincerely,

Michael B. Jandreau, Chairman
Lower Brule Sioux Tribe

Cc: file

February 28th, 2002

Attachment 1

Issues identified by the Lower Brule Sioux Tribe
that are not addressed in the COE RDEIS, for the Master Water
Control Manual (AUGUST 2001)

	Consultation and Coordination	ESA Issues	Cultural Resource Issues	Economic Issues	Water Quality Issues
Tribal 24	***Draft MOA with Lower Brule Sioux Tribe (submitted for review to COE on 2/01) is not addressed.***	***Lack of coordinated consultation on USFWS critical habitat between COE, USFWS and Tribes.***	***CRMPs (2 projects completed out of 6) are not referenced in the EIS.***	***No analysis of impacts of the various "Alternatives" on Basin Tribes, is included in the EIS.***	***Water Quality issues are not addressed in any substantive way in the EIS, particularly as they relate to the Tribes and the various "Alternatives"***
Other 270 Tribal 23	EIS does not reflect issues and questions raised by Tribes throughout NEPA process. Funding	Sand Hills Prairie Least terns Piping Plovers Pallid Sturgeon Sacred Plants	NHPA- On transfer lands ARPA - On transfer lands NAGPRA- on transfer lands Data used is outdated. Inadequate data found in the EIS on all Mainstem Projects and how they will consider the effects on cultural/historic properties. Lake Sharpe data is not included. Severe erosion, vandalism and looting are occuring, directly impacting cultural properties	Irrigation Issues Tribal recreation issues Sedimentation Contaminants Haying, grazing, and sub-surface mineral rights.	Intake structures Integrity Turbidity Sedimentation Contaminants
Legal 43	The RDEIS does not cite existing Tribal law that is applicable to the Mainstem Projects. For example, the Lower Brule Sioux has established a Water Code Ordinance No. LB-86-D As well as a Clean Water Ordinance, LB-01-A				

CR 6,17 Other148

Other 270 WQ 34

WQ 34

MASTERMANUAL NWD02 T0600001

From: Disselhors@aol.com
Sent: Friday, March 01, 2002 12:03 AM
To: Mastermanual
Cc: pemina@hotmail.com
Subject: Master Manual Comments cover

Dear General Fastabend: The cover letter to our Master Manual comments is attached. Thank you. Thomas M. Disselhorst, Attorney for the Three Affiliated Tribes

3/10/2002

Attachment 1 (Continued), February 28th, 2002

Issues identified by the Lower Brule Sioux Tribe

That are not addressed in the COE RDEIS, for the Master

Water Control Manual (August 2001)

Water Rights Issues	Title VI Funding Issues	Environmental Justice Issues	Sacred Sites Issues
Water rights are not recognized in a substantive manner in the document.	***Schedule of work related to Title VI not included in the EIS.***	***Environmental Justice issues are not addressed in the EIS.***	***Executive Order 13007 is not addressed in the EIS.***
The EIS doe not discuss how unresolved Water rights were taken into account in the development of the various Alternatives and the various water allocations associated with each.	Sedimentation Study Stabalization and preservation schedule Involvement with the Cultural Resources Commission Established by Title VI.	Title VI provides limited land returns and funding for mitigation. No process or approach is identified on how non-Title VI, non-transferred lands will be managed. No process or approach for identifying or resolving Environmental Justice issues.	Identification of Sacred sites has not been undertaken by the COE on most of the Take lands. No process or approach for protection of sacred sites is included.
Legal 43	Tribal 25	Legal 45	Other 148 Legal 44 CR 17

February 28, 2002

David A. Fastabend, P.E.
Colonel, Corps of Engineers
Commander and Division Engineer
Northwest Division
12565 West Center Road
Omaha NE 68144-3869

ATTENTION: Missouri River Master Manual RDEIS

Dear Colonel Fastabend:

Thank you for the opportunity to comment on the Revised Draft Environmental Impact Statement prepared for the the Army Corps' Master Manual.

Herein, the Mandan, Hidatsa and Arikara Nation officially request that your agency carry out a Supplemental Environmental Impact Study. We ask this for the following reasons:

Other - 270, 304, 326

1. The RDEIS does not respond in any serious manner to any concern raised by tribes.

2. The RDEIS offers scarce, inconsistent, flawed or confusing data, with which Tribes are expected to make determinations which will affect us for decades.

3. Tribes do not have the technical resources to extrapolate data offered in the RDEIS.

4. The completion of an SEIS will ensure that your agency fully complies with mandates in federal preservation laws such as NEPA and NHPA, which require archeological and traditional cultural property surveys on all projects lands for an undertaking like the Master Manual.

It is our hope that you will give this request your serious consideration. Our Nation has a great deal at stake in all areas of the Master Manual, thus we require accurate, current and useful data to help us reach a determination among the proposed alternatives.

Sincerely,

Tex G. Hall, Chairman
Mandan, Hidatsa and Arikara Nation

Revised Draft Environmental Impact Study
United States Army Corps of Engineers Master Manual
Public Comments
submitted by
Tex G. Hall, Chairman
Mandan, Hidatsa and Arikara Nation

February 28, 2002

You have come here to destroy us!
Plain Voice, Hidatsa Chief at the time of the
construction of the Garrison Dam

You are changing the holy face of our Mother, the Earth.
Ronald Little Owl, Spiritual Leader
Mandan, Hidatsa and Arikara Nation

These are our homelands. We have a responsibility to our dead who are buried there.
Malcolm Wolf, Sr., Councilmember
Mandan, Hidatsa and Arikara Nation

Of 380 Plains Village earthlodge villages (post-A.D.1000) identified along the Missouri River in South Dakota, 215 are inundated or otherwise inaccessible; 43 are immediately threatened with destruction due to lake action or other causes; 91 are suffering ... (from) lake erosion or agricultural impact; and (only) 31 are in good or excellent condition.
Peter Winham, et.al., 1992
and
The average annual erosion at all the Mainstem Reservoir System lakes is estimated at between 1 and 2 square miles, resulting in the loss of 40 to 80 sites per year.
Revised Draft Environmental Impact Statement, August 2001

CR 14

And justice must run down like water . . .
Reverend Martin Luther King, Jr.

Introduction

For thousands of years, peoples along the Missouri River lived in harmony with the river and the tremendous variety of life it supported as the river ebbed and flowed its way through the grasslands at the heart of the North American continent. Mandan, Hidatsa and Arikara communities were constructed above the river on bluffs high enough to avoid being flooded in spring rises, but close enough to the river to be able to use it to their advantage, growing a wide variety of crops in the fertile bottomlands of the river made rich from the nutrients brought by spring flooding, catching the native species of fish and other wildlife found in the river, making use of the many large mammals that were also at peace with the river, traveling and trading on the river, and always using the river's bounty and diversity without destroying it. Long before it was fashionable to consider "environmental protection" an important government policy, the peoples of the Missouri River, our ancestors from whom we continue to learn many lessons, culturally,

spiritually and intellectually, had learned to live with the river as a rich and permanent provider, a "Holy Grandfather" as many called it.[1]

The culture of our ancestors was a rich and vibrant one, often the envy of those who lived away from the river. Our social system and culture was complex, but peaceful, a society that was warm and inviting, even to strangers who came into our midst.

Our ancestors along the river suffered greatly for their generosity and friendliness to strangers. The history of our peoples from the time of the arrival of the Europeans is not an easy one for us to recount. Community after community of Mandan and Arikara were abandoned and destroyed when smallpox swept up the river like a plague from the mid to late 17th century well into the 19th century. At times, this loathsome disease brought by Europeans was inflicted on us intentionally. Thousands upon thousands of our ancestors suffered horribly in hundreds of sites along the river which are now located in states as far south as Nebraska.

Yet our sufferings did not end with the eradication of smallpox. We entered into a treaty with the United States at Fort Laramie in 1851 that defined our territory, more than 12.5 million acres, **and which decidedly did not grant the United States permission to flood our lands and take our property.** The Fort Laramie Treaty of 1851 should still be the Supreme Law of the land, and should put the Mandan, Hidatsa and Arikara Nation as one of the principal decision makers in how the Missouri River is to be managed.

But, less than 150 years after the U.S. expedition of Lewis and Clark came upon the Arikara, Hidatsa and Mandans living in communities near what is now the town of Washburn, North Dakota, *tdHidHda* great changes were made to the river, changes which are, according to the National Academy of Sciences (NAS), leading to the slow death of our ancient "holy grandfather", the Missouri River. Little of what was life giving about the Missouri River remains for us after the construction of the Garrison Dam in the late 1940's and early 1950's, a dam positioned exactly so that the most significant amount of land permanently flooded behind the dam were our ancient homelands contained within the Fort Berthold Reservation of the Mandan, Hidatsa and Arikara Nation. The same is true for other Tribal Nations along the Missouri, from the Sac and Fox and Ponca Tribes in Iowa, to the Omaha, Santee and Winnebago peoples in Nebraska, to the Sioux Tribes living in South and North Dakota, to the us, the Mandan, Hidatsa and Arikara Nation, to the Assiniboine Sioux of the Fort Peck Reservation in Montana.[2]

The loss of our way of life along the Missouri River cannot be compensated for and we cannot regain that way of life any time soon. Yet, despite our intense suffering because of the building of the dams along the Missouri River, despite our ownership of the lands that lay underneath the lakes created behind the dams, our needs, despite our Treaty with the United States Government in 1851 at Fort Laramie, our concerns, as sovereign Tribal Nations with a Nation-to-Nation relationship with the United States, are relegated to a "Tribal Appendix" and are deemed to be outside the scope of the Study. We are essentially being treated as a footnote, an afterthought in the Revised Draft Environmental Impact Statement (RDEIS) on the Master Manual for USACE operations along the Missouri River, and that is unacceptable.

Other - 182, 327

Therefore, we firmly believe that the affects of the USACE's manipulation of water levels in the lakes along the Missouri created behind the dams and the USACE's manipulation (some might say mutilation) of our sacred "grandfather" in those few places where the water flows naturally downstream demands a Supplemental Environmental Impact Statement process (SEIS) that should be commenced immediately upon the end of the public input process for the present RDEIS. There are many, many issues concerning our environmental, cultural and physical resources that are simply ignored, or left out, or treated so lightly in the RDEIS that it is hard to understand just what was done for the last several years as the RDEIS was being prepared. We are prepared to discuss

Other - 304, 326

[1] See the section on "Historic Properties", below.

[2] Please see the attached short description of the manner in which the Mandan, Hidatsa and Arikara Nation lost its lands over the past 150 years, entitled ***"Lost Lands, Lost Communities"***.

these issues far more fully in an SEIS than we can do so now, because we have not been provided the resources to properly show the kinds of impacts that a master manual revision will have on our way of life.

We are, for many reasons, some of which have been explained in this introduction, and some of which are explained elsewhere in this testimony (see discussion on Winters Doctrine rights and the government-to-government relationship), the owners of the Missouri River and its water flow. We, as the Sovereign Nations that have lived along the river for thousands of years, are not simply displaced peoples whose lands just happened to be flooded for the purposes of flood control, power generation and recreational development for the non-Indians who so recently took our land along the river and brought diseases that nearly destroyed us. We have been the caretakers of our "grandfather", the Missouri River, far longer than the USACE has been in existence and our rights to the river are such that our concerns must be made paramount and not secondary as the USACE tries to come up with a plan for management the system of dams, floodgates, bank stabilization efforts, taken lands and wildlife mitigation efforts that is leading to the slow death of our "holy grandfather".

We believe that a SEIS is the only mechanism which can forthrightly address our many concerns about the Master Manual and its development. A new round of true consultations must be conduced in which all resources of affected Tribes and the USACE are brought to bear to conduct the necessary studies to ensure that our environmental resources, our Tribal trust assets, and our "holy grandfather" are protected to the maximum extent possible and such that environmental justice will be forthcoming in this process of developing a new Master Manual for control of the Missouri River, one that truly reflects our concerns, our values and our culture.

Other - 304, 326

<u>Government-to-government consultation</u>

The RDEIS summarizes, in the Tribal Appendix in Section A-11 the general consultation process required, and that will not be repeated here. The RDEIS then lists what it believes were efforts at consultation during the time period when the RDEIS was being developed and the various alternatives for control of the Missouri River were being analyzed. But these series of meetings did not consistently apply either of the Executive Orders that required each Executive branch agency of the Federal government to consult with Tribes, which are now contained in Executive Order 13175.

Legal 46

Most importantly, the consultation process conceived by the USACE never truly involved the Tribes in the decision making process going on at the Corps headquarters in Washington, D.C. or even in the Northwest Division offices or Omaha District offices. Tribes were never invited to any internal meetings of the USACE at which discussions of selection of the Preferred Alternative were taking place, which is truly what consultation requires, nor were they even apprised of such meetings ahead of time so that the interests of Tribes could be addressed at such meetings.

Legal 46 Other - 328

That is likely why the RDEIS treats Tribal issues an "afterthought" in an Appendix. The National Environmental Policy Act, the National Historic Preservation Act, and many other statutes which require review of the affects of significant governmental actions on the areas in which those actions are taking place do not permit such a narrow definition of the issues that should be discussed in relation to the interested Tribes. When such acts are applied to Tribes, resolution of matters that are ambiguous should be made in favor of the affected Tribes. The USACE could have dealt with our issues, but has chosen not to do so.

Legal 47 Other - 327

Nor is it acceptable, in the context of development of a Master Manual which will stay in effect for many years, to simply suggest that the Tribal issues raised can be considered in another forum other than the RDEIS of the development of the Master Manual. That puts those issues in a "holding" pattern in which there is no specific action of the USACE which would require an initiation of the consultation process on the issues which the Tribes believe are important to resolve with the USACE. Thus, the USACE can simply sidestep the impacts of its river control function on Tribes without addressing their fundamental concerns.

Legal 47 Other - 306

Winters Doctrine and Treaty Issues

The RDEIS similarly cavalierly dismisses the import of the Winters Doctrine tribal water rights and Treaty Issues, briefly summarized in the RDEIS in Appendix A-5 and A-7. Simply because most of the tribes along the Missouri River have not quantified their Winters doctrine rights to the waters of the Missouri does not imply that those rights are not paramount when it comes to manipulation of the lake levels behind the dams that have so seriously impacted the Missouri River tribes.

Legal 48

The argument seems to be that because the rivers flow is so large, the Tribes cannot possibly claim enough of the water of the river to have an impact on the USACE's operation of the dam system, especially in the three upstream reservoirs, including Lake Sakakawea, that will become the regulation mechanism for the Preferred Alternative established by the Corps. That is a tremendously uncertain assumption to make. The entire river flow has once been used by the tribes to sustain their way of life. There exists no reason now to suggest that the entire river flow is still not necessary for the tribes to regain some semblance of an economy which supports their needs.

Legal 48
Other 277

A practical example of this is the recreational needs of the Mandan, Hidatsa and Arikara Nation. Maintaining the level of Lake Sakakawea at certain elevations is critical to improving recreational opportunities for the Tribe along the extensive part of the shoreline in which it has an interest. Keeping lake levels high enough for recreational interests to thrive is, for all intents and purposes, the exercise of a fundamental Winters doctrine right and becomes critically important during years of drought that we are now experiencing and, during the upcoming years of the Lewis and Clark Bicentennial Celebration during the years 2003-2006. Without adequate lake levels, the business ventures of the Tribe and its members will simply not realize their potential.

Legal 48
Rec 12

HISTORIC PROPERTIES

I. **Overview of Revised Draft Environmental Impact Statement (RDEIS)**

The RDEIS is weakest in its analysis of impacts to Historic Properties, or more specifically, the sacred and cultural sites associated with the Mandan, Hidatsa and Arikara Nation (hereinafter referred to as "Nation") and other Indigenous Nations of the Missouri River. Models used are flawed and simply fail to consider all impacts to our sites. Scarce data offered for consideration in the RDEIS are inconclusive, meaningless, confusing and inconsistent. Instead of the useful guidance needed by tribes to make a choice among the proposed alternatives, twenty-year-old survey data is offered to us for review, and even this information is incomplete for all reservoirs, each of which contain sites associated with our Nation; moreover, the data is obsolete due to its relative antiquity.

CR 17
Other 148

Archeological data, particularly on constantly-shifting, heavily-impacted Missouri River soils, has a "shelf life" of 8 to 10 years, and must be replaced with updated surveys to be useful to tribes and agency land managers alike. **Class III archeological surveys and Traditional Cultural Property surveys, required by law, <u>should have been undertaken</u> for a project with the breadth and scope of the Master Manual, in consultation with Missouri River tribes, and their results distributed for tribal use in decisions to be made regarding the RDEIS. This did not happen, despite repeated requests by Tribes.** The lack of current survey data makes those decisions impossible to make in any reasoned or meaningful manner.

CR 17
Other 148

Due to the paucity of accurate and useful data concerning our sacred and cultural sites on Project lands, our Nation requests a Supplemental Environmental Impact Statement to carry out Class III pedestrian archeological surveys, as well as Traditional Cultural Property surveys, of all project lands, to be carried out by the Corps prior to the completion of the FEIS, in consultation with Tribes, to fulfill their trust responsibilities to tribes and their Indian Trust Assets which have been neglected by the Corps in favor of other Corps responsibilities on the River. While millions of dollars and several years have been spent to study project impacts to fish and wildlife and other resources, our review

CR 17
Other 148

of the RDEIS shows that our sacred and cultural sites <u>have yet to appear on the Corps' radar</u> as an important resource analyzed in any ***serious*** sense by the agency, despite repeated requests by Tribes that our sacred and cultural sites be given the same consideration as any other impacted resource analyzed in the RDEIS. According to Roy McCallister of the Corps' Master Manual team, however, study data available to Tribes at the time of this writing consists of the results of one study model used to determine a single impact (erosion), which counted the number of times a wave hit an 8-foot section of shoreline.

For our Nation, protection starts with analysis, which begets information, which begets knowledge. Knowledge of the number and types of sites, their location, their condition, their level of endangerment. Combined, these types of knowledge can then empower Tribes and the Corps together to secure the funds necessary to stabilize shoreline where our sacred and cultural sites still exist, and to work together to monitor and protect these sites. In over fifteen years of expressing these needs to the Omaha District Corps office during various consultation meetings, however, we still have no accurate idea of exactly how many or what types of sites still exist. We have little or no idea how many of our precious sacred and cultural sites have fallen into reservoir waters as a result of the Corps' neglect, and we have little or no idea of the numbers of sites that can be saved if we act now to stabilize shorelines. One can see that Tribes have had little success in getting the Corps to meet these needs, even though the preservation of our sacred and cultural sites is a federally mandated responsibility of all federal land-managing agencies.

CR 17

To illustrate this point, since 1978, a total of only $1,933,000 has been spent on shoreline stabilization for a total of 19 sites out of an estimated 3,000 + known sites on project lands (as compared to the several millions spent on developing analysis models on fish and wildlife populations for this study alone). (See page 3-171, RDEIS) Moreover, many of these sites received protection solely because of their perceived high archeological value, and our Nation was not consulted in decisions as to which sites would receive protection, as required by existing federal preservation laws. **The RDEIS, instead, makes repeated statements concerning the project's *purpose*, statements which are meant to exclude the need to protect shorelines which cradle our sites (as well as other Tribal issues raised throughout the EIS process), conveniently side-stepping the Corps' responsibility to preserve and protect sites which hold important spiritual significance to tribes.**

CR 25

Sites like White Swan and Leavenworth have received some shoreline protection, but only as a direct result of negative press and lawsuits brought by the Yankton and Standing Rock Sioux tribes, respectively, to protect the sites. In the late 1990's, sites at Lower Brule received some shoreline stabilization, but this was the result of years of efforts on the part of the Lower Brule Sioux Tribe applying pressure to the Corps to do their duty by the sites in question. Also, sites at the Lower Brule and the Cheyenne River reservations have been surveyed and some have been protected by shoreline stabilization, but again this was the result of recent Congressional legislation, not the Corps simply doing its job, which we have a right to expect.

CR 25

This lack of attention to sites considered valuable by tribes and not necessarily archeologists is **<u>completely unacceptable</u>**, particularly when the record will show that Tribes have made repeated requests for (a) current surveys; (b) for shoreline stabilization of sacred and cultural sites, (c) to be consulted on all cultural resources issues ***before*** the agency makes any decisions concerning them; and (d) for financial resources to be obtained by the Corps to protect spiritually important sites from looting and other endangerment caused as a direct result of the Corps' operation of its mainstem dams, and the public's use of the resultant reservoirs, on the Missouri River. Tribes, in the past 20 years, have repeatedly expressed an **<u>urgent, unmet need</u>** for the Corps to make our sites an agency priority, both policy-wise and in terms of obtaining necessary resources, and to this date all we have to show for our efforts are repeated, unfulfilled promises from the Corps.

CR 26
Other 148

Impacts to our sacred and cultural sites include, but are not limited to: inundation of sites; erosion due to wave action; erosion due to increased rates of water flows from reservoir to reservoir to support hydropower sales and the southern barge industry; raising and lowering of pool levels alternately causes wetting and drying of exposed artifacts, breaking them down; exposure of sites and sacred and material culture to looters and other elements of nature during low pool level periods; freeze-up and thaw of the reservoirs hastens erosion and causes shoreline slumping which exposes ancestral burials and other features, making them ripe for looting on unmonitored, isolated Corps lands; the development and use of

CR 27

recreational areas and other areas where tourists are directed increases the chances of looting and destruction of sites which are present; destruction through archeological excavation, and livestock and other agricultural use of lands containing sites heavily impact sites which are plowed or overgrazed. Data to measure these impacts to our sacred and cultural resources is, as stated above, **either totally absent in the RDEIS, or flawed, confusing and misleading if it is present.**

CR 12,13

The Mandan, Hidatsa and Arikara Nation have called the Missouri River our home since time immemorial. In our respective languages, we call ourselves the ***Nueta,*** or the People of the First Man; the ***Hidatsa***, or the Willow or River Crow, and the ***Sanish***, the Friendly People. Though smallpox and warfare reduced our numbers to the point where we shared one final earthlodge village for mutual protection, and have lived together on one reservation when the Alllotment Act forced us out of our close village lifestyle, we continue to maintain our tribal identies and strong, spiritual ties with our ancestors through the places where they once lived, our aboriginal homelands.

To us, the Missouri River is a holy being, one we approach and regard with reverence and respect. Since time out of mind, we have looked to our Mysterious or Holy Grandfather, as we call the river, for the continuity of all life. We have sought shelter in the timbers which once lined his shorelines, planted our abundant gardens on the rich alluvial terraces, and traded our produce with other Nations traveling his waters and shorelines. Our entire identity as indigenous peoples is so closely tied with our Grandfather that we could not conceive of a time when we did not live in his protective embrace, until we were forced out of our riverine homes by the U.S. government. Even now that our Grandfather has been dammed up and diverted, his flowing waters stilled and reversed, this holy being continues to look after his ***Nueta, Hidatsa*** and ***Sanish*** children, providing us with the water of life for our families, our crops, our livestock and other industries.

We still conduct ancient ceremonies by the waters of our Grandfather, the purpose of which ensures the continuity and survival of our Peoples. Sometimes the elderly conductors of those ceremonies need to travel far distances to find a stretch of shoreline where the river still flows freely, as required, and sometimes those precious elders have been shot at while trying to approach our Holy Grandfather for their prayers. Though almost fifty years have passed since we lost our own meandering stretch of the river within our reservation's exterior boundaries, our tribal members who lived during that very sad and painful time still recall with crystal clarity all the places which are now inundated by the Garrison Dam; places of sacred purpose, places which hold significant importance in the stories of our people; places lost now to us forever.

Though we have endured the unendurable, the loss of our treaty-guaranteed, river-bottom homes, we know that there are other sites created by our ancestors still in existence within the Omaha District, and these village and ceremonial sites are precious to us ***because they are all that we have left*** of our ancestors, of our good ways, when the world was still clean and we were guided by our own rich and loving ceremonial lifeways. More than anything, however, the continued existence of our ancestors' sites means the continued existence of ourselves as Nations, for we can utilize these special places to revitalize our spiritual and cultural lifeways, and to restore happiness and peace in the hearts of our People. We can use them to ensure that there will be ***Nueta, Hidatsa*** and ***Sanish*** cultures and languages to pass on to those yet unborn, for the nature of our learning depends on quiet, isolated sacred places for the People to talk to our Creator. **It is not possible to overstate our need for the continued existence of these holy places where our ancestors once walked,** and so much depends on our ability to preserve them for the future generations' use and education. As shown by the dedication and persistence of our Nation's leadership to see that these sacred places are preserved and protected, these sites ***are critically important to us, and that in itself, the sacred and cultural importance these sites have to our Nation, has to matter. It has to matter to all those whose job it is to preserve and protect our sacred and cultural sites, and it has to matter now, before these precious sites are all destroyed through the "management" of our Mysterious or Holy Grandfather, the Missouri River.***

The Mandan, Hidatsa and Arikara Nation realizes that most people outside of our culture do not, and probably cannot, understand our need to preserve the places that are holy to us. It is perhaps not necessary that the decision and policy makers within the U.S. Army Corps of Engineers understand our urgent and critical need to protect these holy places; it is only necessary that they understand their own laws and regulations, and fulfill the spirit, intent and letter of those laws, even if that requires that they make the preservation and protection of our sacred sites an agency priority which requires the expenditure of funds.

II. COMMENTS SPECIFIC TO RDEIS ISSUES

1. Due to the lack of an effort to obtain data specific to impacts to our sacred and cultural sites, the RDEIS is consistent only in its underestimation of project impacts to our sites in all the alternatives proposed.

CR 12
Other 148

2. The lack of useful data could explain the absence of any proposed, meaningful mitigation of impacts to sites, yet this is information required by federal preservation law, and it is missing from the discussion of our sites in the RDEIS.

Other 148

3. Also missing is a meaningful discussion which proposes ways in which the federal agency (the Corps) is to identify and obtain the necessary financial resources to fulfill its obligations to our sites in the areas of protection, preservation and the stabilization of Missouri River and reservoir shorelines. Instead, we have only, "Site-stabilization work is contingent upon available funds." (RDEIS, p. 3-170)

CR 17
Other 148

4. The only model used to estimate one project impact (erosion) to sites is flawed, misleading and meaningless. The RDEIS discussion of the public's impression of flawed study models (p. 6-10) will not protect or preserve our sacred and cultural sites, nor will it bring back the precious holy places that have already fallen into the water.

Other 148

5. To provide Tribes with meaningful information on which to base a decision about the proposed alternatives, new and complete surveys must be conducted and the results distributed to all Missouri River tribes. This can be accomplished through the completion of a ***Supplemental Environmental Impact Statement, which our Tribe has requested herein.***

Other 148

6. The scarce data available in the EIS concerning our sacred and cultural sites comes from incomplete and obsolete surveys, rendering it useless information.

CR 17

7. There is an overall tone to cultural resource discussions in the RDEIS that imply the Corps' management of the Missouri River will continue to have acceptable levels of impact to our sacred and cultural sites. Our Nation strongly objects to this tone, and asserts that the annual loss of 40-80 sites is unacceptable and a violation of federal preservation laws. At this rate of loss, within 20 years 1,600 sites will have disappeared. **Within another 20 years, there will be *no trace* of our Nations' millennia-long occupation of our homelands along the shores of the Missouri River. This cannot be allowed to happen - our survival as a Nation depends on these holy places.**

CR 14, 18

8. Given the conservative estimate of the loss of 40-80 sites per year, the 19 sites which have received some shoreline stabilization during the last 30 years clearly indicates the utterly ineffective mitigation program in place at the Omaha District offices. **Our sacred and cultural sites are disappearing! The current mitigation program must be replaced with Cultural Resource Management Plans such as the one developed for Lake Sharpe, whereby tribal sacred and cultural sites are co-managed by affected Tribes** and the Corps. Monies must be identified and secured for shoreline stabilization and other mitigation projects, and this effort must be made a priority within the Omaha District.

CR 14, 15, 17

9. Although Omaha District staff have spoken of it during meetings with Tribes, we see no evidence of the Corps' expressed intention to address mitigation issues within the RDEIS through the development of a Programmatic Agreement between Tribes, states, THPOs, SHPOs, and the Corps. This important agreement would replace the earlier, now voided, PA which was foreclosed by the National

CR 11,16

Council on Historic Preservation, or the Advisory Council, because it was never initiated by the Corps, which if it had been activated, would have brought **some level** of protection to our sites in the last ten years, even though Tribes were not allowed to participate in that PA.

The FEIS must address the Corps' silence on mitigation issues, which discussion must include serious initiatives to create, in consultation with Tribes, (a) Cultural Resource Management Plans where **Tribes are co-managers** of all sacred and cultural sites with the Corps, and (b) a Programmatic Agreement whereby the Corps agrees to make our sites an agency priority and backs that priority with a significant, separately-funded, permanent stabilization budget. No more avoiding the issue by stating that the Corps' policy is to take stabilization funds from their O & M budget, which is chronically short and never includes enough monies for tribal concerns. The Corps must create a separate initiative and budget for shoreline stabilization, and to do this they must take their federally-mandated responsibilities to our sites seriously.

CR 17

10. The RDEIS discusses the Corps' desire to work with Tribes as partners, to respect the government-to-government relationship it shares with tribes, and to work in earnest, good faith to address Tribal issues. The discussion which takes place on page 4-2 of the RDEIS, however, **flatly contradicts** these expressed desires by dismissing tribally proposed alternatives as "not within the scope of the Study." In the comment process of the PRDEIS, the Mni Sose Intertribal Water Rights Coalition, on behalf of Missouri River tribes, submitted in 1999 a proposal for a $2.2 million dollar study which would provide the study and analysis the Corps is ***required*** by federal law to do for the RDEIS to address tribal concerns, yet the Corps dismissed this initiative with the following statement: "The Corps feels it has adequate data and analyses to complete the EIS process while fulfilling all of the requirements required by NEPA and the Executive Order on Environmental Justice."

Other 325
Legal 49

Once again, our review of the RDEIS reinforces our belief that the data and analysis of our sacred and cultural sites presented in the RDEIS is utterly inadequate, misleading, inconsistent and flawed. Had the Corps done the studies requested by Mni Sose, **studies federal agencies are required by law to do**, the opposite would have been true. Moreover, we are repeatedly assailed in the RDEIS by the alternative proposals of groups like the Missouri River Basin Association, the American Rivers Association, and others. **The RDEIS is a very large document, however it appears there is no room within this document for the concerns and issues of tribes, and the manner with which our issues have been dismissed is there for all to see in the pages of the RDEIS.**

Other 148, 270

11. Speaking of the EO on Environmental Justice, our Nation is one of this country's first victims of environmental ***injustice***, in that we were required to bear the lion's share of the burden in creating the dams in the first place, and that legacy continues to this day. As evidenced in the RDEIS, it is Tribes' concerns that are ignored, it is Tribal issues that are never responded to in any serious manner, and it is Tribal sovereign rights that are categorically denied, ignored or side-stepped in the entire EIS process. The Corps' statements in the RDEIS, a public document, which declare that they are in compliance with NEPA (what about NHPA, ARPA and NAGPRA?), let alone the Executive Order on Environmental Justice is akin to the Emperor who admired his new set of clothes so much that he wanted all the people in his realm to admire them, too. **Let the record show that the people of the Mandan, Hidatsa and Arikara Nation wish to play the role of the little child in the Emperor's story who pointed out that, in fact, the Emperor fooled no one but himself.**

Other 270, 148, 329

Legal 50

12. Consultation throughout the entire EIS process has been largely a waste of time when you consider that Tribes traveled hundreds of miles, spent badly needed travel dollars and precious time consulting with an agency, that in the end, utterly failed to address in the RDEIS, in any serious manner, even one concern raised by Tribes.

Other 326, 327

13. The study model used in the RDEIS to calculate impacts to our sacred and cultural sites does not acknowledge the cumulative impacts to our Nation's sites located in and around the three lower reservoirs, assuming that the stable pools of these reservoirs do not have the same affects as pools which are raised and lowered in the north. This is an **outright pretension**, and if this were indeed true, why spend scarce mitigation dollars setting down riprap on the Lower Brule and Crow Creek reservations? If erosion were not a problem on Lake Sharpe, how did an entire Mandan/Arikara village disappear from that area (the White Dog site)? Why was the Corps sued over exposed burials on Yankton homelands if erosion were not an issue on the lower three lakes?

Other 148

14. Scarce survey data included in the RDEIS is not only rendered useless to Tribes because of its relative antiquity, but it does not include the special type of survey data that only Tribes can provide when Traditional Cultural Property surveys are conducted. The RDEIS is incomplete and no decisions concerning the operation of the river can be made until TCP data is gathered and distributed among Tribes and land managers. This issue was raised by Tribes in the PRDEIS, yet it is still ignored in the RDEIS process. **Both NHPA and NEPA require TCP data, and the Corps has failed to fulfill the requirements of these federal preservation laws.**

CR 12
Legal 50
Other 148

15. **The Corps is, therefore, in violation of federal preservation law for (a) failing to provide accurate, timely and useful archeological and TCP survey data, and to coordinate those surveys in consultation with affected tribes (b) failing to act to preserve irreplaceable sacred and cultural sites (c) failing to mitigate losses and destruction to the vast majority of sites on lands under its control and (d) failing to address their responsibility to preserve, protect and mitigate adverse affects to our sites within the RDEIS.**

Legal 50

16. Attached to this comment section, to be made a part of the RDEIS record, please find the following document:

* A briefing paper for the Indian Trust Asset and Environmental Justice meeting held November 29, 2000 between Tribes and the Omaha District Corps office.

Conclusion

We believe that a Supplemental Environmental Impact Statement process must be started as soon as possible to address our many concerns. Our culturally significant properties along the Missouri River cannot be relegated to issues that should be addressed in a different forum. The effects of the Master Manual revisions will be profound on our sites, our way of life, and if they are not addressed now our sites will be lost to future generations of our people. This cannot be permitted to happen.

Other 304

T0700001

Oglala Sioux Tribe

Land Committee
P.O. Box H Pine Ridge, SD 57770
Phone: 605-867-2244 Fax 605-867-2609

Oglala Sioux Tribe

Statement in Opposition to Army Corps of Engineers

Missouri River Master Water Control Manual Review and Update

Revised Draft Environmental Impact Statement

The Oglala Sioux Tribe is a signatory of the Treaty of Fort Laramie of 1851, and the Treaty of Fort Laramie of April 29, 1868. Under the 1868 Fort Laramie Treaty, the Missouri River's east bank constitutes the treaty-recognized boundary of the Great Sioux Reservation. Article 2 of the Treaty 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.

Consequently, the Oglala Sioux Tribe possesses Treaty-protected property rights to the Missouri River, its waters and river bed. The Treaty boundary of our Nation extends to the "east bank of the Missouri River." The Missouri River is within the boundaries of the Great Sioux Reservation, as defined in Article 2 of the 1868 Treaty. The Oglala Sioux Tribe, along with the other bands of the Great Sioux Nation, have a Treaty claim to all land and water of the Missouri River, including the bed of the Missouri, under the 1868 Treaty.

In Article 2 of the 1868 Treaty, 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 United States purported to take Sioux Nation Treaty lands under the Act of February 28, 1877 (Black Hills land taking), and the Act of March 2, 1889 (carved out existing Reservation boundaries from Great Sioux Reservation and illegally conveyed title of remaining land to homesteaders). The United States Supreme Court determined that these acts constituted "unfair and dishonorable dealings," and that there was no compliance with Article 12 of the 1868 Treaty. *United States v. Sioux Nation*, 448 U.S. 371 (1980).

The United States has a legal duty to protect and enhance these rights. Consequently, the Corps of Engineers' operations must respects the right of the Oglala Sioux Tribe to utilize our water for irrigation, domestic supplies, livestock, industry, wildlife enhancement, cultural resources and other beneficial uses.

Other - 277

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. at 576.

The Mni Wiconi Project Act of 1988 bolsters the Tribe's claim to Missouri River water rights, providing congressional authorization for diversion of municipal water supplies from the Missouri River main stem to the Pine Ridge Indian Reservation.

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). Consequently, the Tribe also possesses the right to divert all of the water that is needed for irrigation on the Pine Ridge Reservation, as well as for all other reasonable beneficial uses.

The Environmental Impact Statement must include our water rights in the environmental baseline for Missouri River operations. However, it fails to do so. Instead, the RDEIS proposes non-Indian water uses such as navigation, recreation, hydropower and water supply, and for endangered species habitat. Waters subject to the claims of the Oglala Sioux Tribe under the principles enunciated by the United States Supreme Court in the *Winters* case are allocated to non-Indians and to ameliorate damage to the habitat of endangered species that has been caused by non-Indian development.

Legal 51

In the RDEIS, the Corps of Engineers proposes to put the reserved water rights of the Oglala Sioux Tribe for the beneficial uses of non-Indians and for endangered species. This diminishes our ability to use our own water in the future.

The alternatives considered by the Corps of Engineers in the RDEIS rely exclusively on the current level of depletions in the Missouri River. Yet the Corps of Engineers' own depletions analysis clearly demonstrates that the level of claims and actual future use by Tribes, including the Oglala Sioux Tribe, shall have a significant impact on the Missouri River. However, this is completely ignored in the RDEIS.

Other 9, 277
Legal 52

The Corps simply concludes that the future operations of the Missouri River would be adjusted to accommodate future perfected uses by the Tribes. The Corps proceeds on the presumption that Indian water rights shall not impact future operations on the Missouri River.

Other 277

The RDEIS is a flawed planning guide that addresses the needs non-Indian water users and environmental interests and ignores future water users by Indian Tribes. The fact that it fails to contemplate future Indian uses has the effect of minimizing the prospect of future Indian uses, because the water is allocated for other uses.

Other 277

We are also concerned with the treatment of cultural resources. In the RDEIS, the Corps of Engineers merely estimates the amount of damage to cultural resources. 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.

CR 12,13

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.

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 project 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 Environmental Impact Statement 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, instead of destroying them.

Legal 53

The socioeconomic analysis utilizes false and inaccurate data. Outdated census data is used rather than more accurate Bureau of Indian Affairs Labor Force Reports for unemployment on the affected Indian Reservations.

Other 324

The Pine Ridge Reservation is mischaracterized as a third tier county. The socioeconomic figures are not accurately set out in the RDEIS. This is actually acknowledged on page 3-151 of the RDEIS - 'the socioeconomic data presented in this section are based on regional data and are not specific to any reservation." This despite the fact that we are identified as an ""Identified Reservation(s) affected along the Mainstem Reservoir System." That makes no sense.

Other 325

Since the Tribe is acknowledged to be "affected" by COE operations, Executive Order 12898 on Environmental Justice requires the corps to determine

the impacts on our minority community. Yet the Corps admits that it lacks data "specific to any reservation."

The Corps of Engineers has a legal duty to work with our Tribe on a government-to-government basis to obtain this data. The RDEIS itself explains that despite the request of the Tribes, the Corps failed to do so -

> *... the (Tribes) felt that Indian water rights had not been adequately addressed in the PRDEIS nor would they be taken adequately into account as the Corps worked with various basin groups to get feedback on potential recommendations for water control plans. Second, (there is) concern that the Corps had inadequate data on which to identify a selected plan and to address the impacts on the Tribes as it completed the RDEIS. Finally, the PRDEIS did not identify 'any plans to mitigate the impact of its operations on the tribes, because of the disproportionate impacts of its operations on the Native American communities," as required under the Executive Order on Environmental Justice... The Corps feels it has adequate data and analyses to complete the EIS process while fulfilling all of the requirements required by NEPA and the Executive Order on Environmental Justice....*

Other 148, 270, 268
Tribal 13
Legal 54

RDEIS, 4-3.

Yet the Corps makes repeated references to "1994 Mni Sose surveys." That data is outdated and unreliable. The Tribes were not consulted directly. The Corps itself admits that the data "are not specific to any reservation." RDEIS, 3-151. Consequently, the RDEIS fails to meet the requirements of NEPA and Executive Order 12898.

Other 325
Tribal 18, 26

The Executive Order requires that impacts on minority communities be identified and mitigated. The RDEIS does neither. It must be completely revised, in order to accurately determine and mitigate the impacts on the Oglala Sioux Tribe.

In sum, the RDEIS fails to provide for use of Winters Doctrine water rights by the Oglala Sioux Tribe. These valuable rights stem from the 1868 Fort Laramie Treaty, which guarantees our right to the land and water of the Missouri River.

Legal 54
Other 268

Cultural resources surveys are too narrow, and there is no protection plan as required by the National Historic Preservation Act and Native American Graves Protection and Repatriation Act. Socioeconomic data is inaccurate, and in fact the RDEIS admits this. The Corps rejected a request by the Indian Tribes to work with us to obtain more accurate data. The Corps refused, and continues to use outdated U.S. Census and Mni Sose surveys. More accurate data is available but remains unused by the Corps of Engineers. Impacts are not identified. Mitigation is not provided. The RDEIS violates the Executive Order on Environmental Justice, the

CR 6
Other 148, 270, 325

PRAIRIE KNIGHTS TEL:1-701-854-3795 Feb 28'02 11:05 No.002 P.01

Prairie Knights Casino

Fax Cover Sheet

To: Army Corps of Engineers
Attention: Rose Hargrave

Fax Number: (402) 697-2504

From: John Yellow Bird Steele
Oglala Sioux Tribe

Fax Number:

Number of Pages (Including cover sheet): 6

PRAIRIE KNIGHTS TEL:1-701-854-3795 Feb 28'02 11:09 No.002 P.06

requirements of the National Environmental Policy Act, and the 1868 Fort Laramie Treaty. For these reasons, it is opposed and rejected by the Oglala Sioux Tribe.

CONCURRED:

John Yellow Bird Steele, President
Oglala Sioux Tribe

MASTERMANUAL NWD02 T0800001

From: tony provost
Sent: Monday, February 25, 2002 3:28 PM
To: Mastermanual
Subject: Omaha Tribal Comments

To whom it may concern,

This letter is in regards the comments to the Missouri Master Manual from the Omaha Tribe of Nebraska and Iowa. The Missouri River has sustained our whole existance since the late 1700's to the present day. Prior to 1934, the river was untouched and prestine. Since then it has suffered massive amounts of polluntants and other changes. Without the consultation of Native's that have lived by the river for hundreds of years. Adding Dam's from Montana to South Dakota, altering its flow forever. Well, that was then, and this is now. With saying that, let me introduce myself. I am, Antione A. Provost, the Director of the Environmental Protection Department for the Omaha Tribe. I have full authority to comment on this subject by the Omaha Tribal Council and Donald Grant - Chairman. After several meetings with the tribal council over this matter, the following comments were the consensus of the Omaha Tribe of Nebraska and Iowa.

1. Consultation with the Omaha Tribe has been little or none at all. Tribal 18, 27

2. Inherant Sovereign Water Rights of the Omaha Tribe have not been mentioned nor addressed. Other 268 Legal 55

3. No working relationship between the Omaha Tribe and The U.S. Army Core of Engineers. Tribal 18, 27

There were other comments as well, yet these were the highlights. The different management plans were all very neat and scientific. However, the most simple aspects of them all were not addressed. Will the Land allow such changes? Thank you for your time and attention. If you have any other questions please feel free to contact me at your convience.

Antione A. Provost - Director

Omaha Tribe Environmental Protection Department

phone: 402-837-5291 fax: 402-837-5223

provost@huntel.net

3/10/2002

T0900001

Sisseton-Wahpeton Sioux Tribe

Lake Traverse Reservation
Office of Environmental Protection
Old Agency Box 509, Agency Village, SD 57262-0509
PHONE: (605) 698-4998 FAX: (605) 698-4999
Email: swstoep@basec.net

February 28, 2002

U.S. Army Corps of Engineers
Northwestern Division
Attn.: Missouri River Master Manual RDEIS Project Manager
12565 West Center Road
Omaha, NE 68144-3869

Sirs:

The Sisseton Wahpeton Sioux Tribe (SWST) extends the following comments to the Army Corps of Engineers on the alternatives outlined in the Revised Draft Environmental Impact Statement (RDEIS) for the Missouri River Master Manual:

1. The Missouri River Basin Tribes (MRBT) lack participation in the management of the Missouri River water system. Tribal 18,48 Other - 306, 299
2. If the responsible federal agencies would involve MRBT as cooperating agencies in the management of the Missouri River, Tribes lack the financial resources to collect and analyze the data before making their recommendations. Tribal 17 Other - 299, 321
3. The MRBT, individually, have been unable to address water rights issues due to the Federal agencies complex infrastructure, the Tribe's geographical isolation, lack of financial resources, technical skills and appropriate technology. Tribal 8,13 Other - 268
4. The MRBT lack data on the alternative's impacts on tribal concerns. The RDEIS does not include sufficient data for most Tribal Leaders to provide meaningful comments on the proposed alternatives. Tribal 17 Other - 269
5. The SWST concurs with the Mini Sose's request for an extended comment period to adequately assess the impact of the proposed alternatives of the RDEIS.

Big Coulee ~ Buffalo Lake ~ Enemy Swim ~ Heipa/Veblen ~ Lake Traverse ~ Long Hollow ~ Old Agency

6. The SWST particularly points out that in the Current Water Control Plan (CWCP) the Adverse Impact to Cultural Resource and Native Remains needs in-depth research on this very sensitive matter (i.e. the current matter in the state of Georgia). CR 6, 17

7. The SWST concurs with Mini Sose's indication that Increased Hydropower Costs would increase and in no way benefit the Tribe. HPower 12

8. The SWST concurs with Mini Sose's recommendation that the U.S. Army Corps of Engineers must propose plans to mitigate the impacts of its operations on the tribes, because of the disproportionate impact of its operations on Native American communities, none of the alternatives outlines in the RDEIS address mitigation measures. Other - 270 Tribal 19, 22

The Sisseton Wahpeton Sioux Tribe and Office of Environmental Protection appreciates the opportunity to voice its concerns regarding the RDEIS and is willing to work the U.S. Army Corps of Engineers to ensure that tribal concerns are addressed in the Master Water Control Manual.

Sincerely,

Myrna German
Administrator
Office of Environmental Protection
Sisseton Wahpeton Sioux Tribe

T1000001

Charles W. Murphy
Chairman

Tom Iron
Vice Chairman

Sharon Two Bears
Secretary

AT LARGE
Jesse Taken Alive
Reva Gates
Pat McLaughlin
Miles McAllister
Ron Brown Otter
Isaac Dog Eagle, Jr.

DISTRICTS
Carol White Eagle
Cannonball District
Verna Bailey
Fort Yates District
Milo Cadotte
Wakpala District
Frank White Bull
Kenel District
Avis Little Eagle
Bear Soldier District
Milton Brown Otter
Rock Creek District
Allen Flying Bye
Little Eagle District
Randal White Sr.
Porcupine District

February 27, 2002

Colonel David Fastabend
Army Corps of Engineers
Northwestern Division
12565 West Center Road
Omaha, Nebraska 68144-3869

RE: Missouri River Master Water Control Manual Review and Update Revised Draft Environmental Impact Statement

Dear Colonel Fastabend:

Enclosed you shall find the comments of the Standing Rock Sioux Tribe on the above referenced matter. For the reasons outlined therein, the Standing Rock Sioux Tribe rejects the RDEIS.

I am extremely concerned with this matter. I look forward to discussing it with you soon.

Sincerely,

Charles W. Murphy, Chairman
Standing Rock Sioux Tribe
Fort Yates, North Dakota 58538

P.O. BOX D • FORT YATES, NORTH DAKOTA 58538
PHONE: 701-854-7201 or 701-854-7202 • FAX 701-854-7299

Standing Rock Sioux Tribe

Rejection of the Army Corps of Engineers

Revised Draft Environmental Impact Statement

Missouri River Master Water Control Manual Review and Update

February 20, 2002

I. Introduction

Historically and today, no agency of the United States government has harmed the Standing Rock Sioux Tribe as much as the Army Corps of Engineers. In 1958, the Corps rammed through Congress Public 85-915, providing for the forced acquisition of 56,000 acres of valuable Missouri River bottomlands from the Standing Rock Sioux Tribe. The Corps inundated and destroyed most of this land, for the site of Oahe Reservoir.

Today, the Corps refuses to restore lands taken but not used for Oahe Reservoir. With respect to Missouri River water management, the Corps has released the Revised Draft Environmental Impact Statement for the Missouri River Master Water Control Manual (RDEIS), in August 2001. The RDEIS provides for the allocation of water that is subject to the Winters Doctrine claims of the Standing Rock Sioux Tribe, for endangered species habitat and other non-Indian uses.

In the RDEIS, the Corps of Engineers proposes to supply water that is needed on the Standing Rock Indian Reservation for Indian water uses and for the survival of the Standing Rock Sioux Tribe, for downstream water flows below Gavins Point Dam. The "GP," "MCP" and "CWCP" alternatives proposed by the Corps in the RDEIS shall result in the confiscation of our water. The Standing Rock Sioux Tribe strongly opposes all alternatives contained in the RDEIS. New alternatives should be developed, for the protection of Indian water rights through future depletions, and for the protection of Native American cultural resources.

Legal 56
Other 9, 277

The Standing Rock Sioux Tribe objects to the RDEIS, for the following reasons -

1. The alternatives contained in the RDEIS provide for non-Indian water flows and water uses, although the water is subject to the claims of the Standing Rock Sioux Tribe under the Winters Doctrine. No provision is made for full use of the water to which our Tribe is entitled under the Winters Doctrine. The RDEIS threatens and suppresses the water rights of the Tribe.

Legal 57

2. The RDEIS fails to account for the destruction of Native American cultural resources on the Missouri River, and fails to provide any alternative for the protection of these resources.

3. The RDEIS fails to account for the environmental damage and destruction on the Standing Rock Indian Reservation resulting from the Pick-Sloan program and the on-going Corps of Engineers' operations.

Legal 58
Other 182, 330

4. The RDEIS lacks any provisions for mitigation of the damage to the Standing Rock Reservation in violation of the Executive Order on Environmental Justice, (E.O. 12898).

Legal 59
Other 270

5. In the NEPA process, the Corps has failed to undertake any meaningful discussion and dialogue with the Standing Rock Sioux Tribe as required in Executive Order 13175. Public meetings are mere formalities, and the concerns of the Tribe are never addressed.

Legal 59
Tribal 28

II. Illegal Suppression of Indian Water Rights in RDEIS

Legal 60
Other 277

The position of the Standing Rock Sioux Tribe with respect to the Corps of Engineers' impacts on the Tribe's water rights is embodied in Standing Rock Sioux Tribe Resolution 106-01 (attached hereto). This Resolution states in part -

> 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 clearly has 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. (United States v. Ahtanum Irrigation District, 236 F.2d 321, 327 (9th Cir. 1958)).....
>
> 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 the Interior to deny consideration of Indian reserved water rights in baseline environmental studies of endangered species (constitute) diminishment of property rights...

Legal 60
Other 270, 165

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 the 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.

Other 277
Legal 60

Pre-eminent Indian law scholar Felix Cohen described the Tribe's conundrum as follows -

> 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, *Handbook of Federal Indian Law*, 225 (1982 ed.), pp. 227-228.

This is precisely what is occurring in the Missouri River basin. In the Missouri River RDEIS, the Corps has clearly responded to the economics of hydropower, upstream recreation, and to environmental values. Yet the RDEIS ignores the future water depletions planned by the Tribe under the Winters Doctrine.

Legal 60
Other 9

The Standing Rock Sioux Tribe claims water rights to the Missouri River, its tributaries and the basin's groundwater of not less that 1.3 million acre-feet. As trustee for the Tribe, the United States has a duty to protect and enhance these rights. Consequently, the Corps of Engineers must operate the dams in a manner which respects the right of the Standing Rock Sioux Tribe to utilize our water for irrigation, domestic supplies, livestock, industry, wildlife enhancement, cultural resources and other beneficial uses. The RDEIS fails to do so.

Legal 60
Other 277

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. at 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).

The RDEIS proposes water management alternatives that undermine our rights to the use of water, in favor of non-Indian water uses such as navigation, recreation, hydropower and water supply, and for endangered species habitat. Waters subject to the claims of the Standing Rock Sioux Tribe under the principles enunciated by the United States Supreme Court in the *Winters* case are allocated to non-Indians and to ameliorate damage to the habitat of endangered species that has been caused by non-Indian development.

Legal 60

In the RDEIS, the Corps of Engineers proposes to put Standing Rock's water to use by others. This diminishes our ability to use our own water.

Legal 60
Other 277

The alternatives considered by the Corps of Engineers in the RDEIS rely exclusively on the current level of depletions in the Missouri River to arrive at its conclusions. Yet the Corps of Engineers' own depletions analysis clearly demonstrates that the level of claims and actual future use by Tribes, including Standing Rock, shall have a significant impact on the Missouri River. This is completely ignored in the RDEIS.

The RDEIS fails to address both the impact of its alternatives on the water rights of the Standing Rock Sioux and other Indian Tribes, and the impact of the Tribe's water claims on the alternatives themselves. The Corps simply concludes that the future operations of the Missouri River would be adjusted to accommodate future perfected uses by the Tribes. The Corps proceeds on the presumption that Indian water rights shall not impact future operations on the Missouri River.

Other 277

The RDEIS is a flawed planning guide that addresses the needs non-Indian water users and environmental interests and ignores future water users by Tribes such as Standing Rock, which possess very extensive water claims. The fact that it fails to contemplate future Indian uses has the effect of minimizing the prospect of future Indian uses, because the water is allocated for other uses.

Other 277

In its depletions analysis, the Corps has determined that there is 7.1 million acre-feet of water in the Missouri River, which, when depleted, impacts the existing non-Indian uses. Clearly, there is adequate water in the Missouri

Other 277

River to accommodate the consumptive and non-consumptive water needs of the Standing Rock Sioux Tribe.

In the final Environmental Impact Statement, the Corps should affirmatively commit to assisting Standing Rock in putting water to use and protecting our water rights. With respect to water rights, the Corps should recognize that Standing Rock possesses a justified claim under the *Winters* Doctrine of not less than 1.3 million acre-feet of water, and set aside 1.3 million acre-feet from the 7.1 million acre-feet of surplus water, for consumptive use at Standing Rock.

Other 277

In the final EIS, the Corps should Identify the Lake Oahe water levels that are required to supply the water intakes on the Standing Rock Reservation, including intakes for domestic water supplies at Fort Yates and Wakpala, and for irrigation at Fort Yates and for the Eagle Unit irrigation project on the Grand River, and select no alternative in the Environmental Impact Statement that would threaten these intakes during periods of drought. In addition, there should be a calculation of the lost economic opportunities on the Standing Rock Reservation due to the Pick-Sloan program, and develop a plan to redress these losses through greater participation in the National Economic Development benefits of Pick-Sloan. The valuations contained in the RDEIS are inaccurate, for failure to account for these costs that our Tribe bears.

Other 277, 331

The RDEIS misstates the import of Indian reserved water rights. The RDEIS 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, RDEIS, 3-113.

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 Corps' must revise its description of Indian water rights for the final EIS.

Other 332
Legal 60

The water rights of the Tribes under the Winters Doctrine are vested, perfected rights. *Arizona v. California.* Standing Rock has not quantified our *Winters* Doctrine water rights. We oppose the quantification of our reserved water rights, because there is no fair or adequate legal forum. However, the Standing Rock Sioux Tribe owns our water regardless of whether our rights have been quantified. It is ludicrous to suggest that Standing Rock "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. Standing Rock possesses the right to use all of the water from the Missouri River (and its tributaries and groundwater) that is reasonably needed for all beneficial uses. *Arizona v. California.* But 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. It is suggested 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.

Legal 60
Other 277

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 RDEIS. By failing to do so, the Corps of Engineers diminishes our ability to use implement our reserved water rights, for the survival of the Standing Rock Sioux Tribe.

Other 277
Legal 60

University of South Dakota Law Professor John H. Davidson described the jeopardy put on our rights by the Corps of Engineers as follows -

> *...the final Master Manual may lock in the status of specific river uses with a firmness that is every bit as solid as many Supreme Court equitable apportionments. Any given process is as important as the finality and enforceability of the final decision, be it judicial, legislative or administrative. For Missouri River water users, the Master Manual process may be as important as the litigation in Arizona v. California was to Colorado River water users.*

John H. Davidson, *Indian Water Rights, the Missouri River, and the Administrative Process: What are the Questions?* 24 American Indian L. Rev. 1, 10 (2000).

As stated in Standing Rock Sioux Tribe Resolution 106-01, the Tribe takes the threat to our water rights from the Corps of Engineers very seriously. We shall use all forums available in international and federal law to defend these valuable rights against the attack of the Corps of Engineers that is contained in the RDEIS.

Legal 61

III. Illegal Treatment of Native American Cultural Resources

In the Missouri River operations and the RDEIS, the Corps of Engineers violates numerous federal historic preservation laws that are very important to our Tribe.

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 Corps of Engineers is responsible for ensuring "that historic properties under the jurisdiction or control of (the Corps) are identified, evaluated, and nominated to the National Register." 16 U.S.C. §470h-2. Legal 62

The Native American Graves Protection and Repatriation Act (NAGPRA) also applies. 25 U.S.C. §3001 et seq. Under NAGPRA, human remains or funerary objects on Corps projects lands within the Standing Rock Reservation belong to the Standing Rock Sioux Tribe. 25 U.S.C. §3002(a)(2). The Tribe also owns such items that located on Corps land outside of the Reservation, but which can be identified as Standing Rock Sioux. *Id.* 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 Advisory Council on Historic Preservation has determined that under the Current Water Control Plan (alternative CWCP in the RDEIS) the Corps of Engineers is seriously violating these provisions. On July 17, 2000, the National Advisory Council on Historic Preservation terminated its Programmatic Agreement with the Corps of Engineers, for management of cultural sites on Missouri River Basin Pick-Sloan Program lands. The Council stated - Legal 63

> *The PA was intended to allow the Corps greater flexibility in how it met its obligations under section 106 while fostering better long-term planning for and stewardship of historic properties. The most recent occurrence with the White Swan burial ground serves to illustrate the degree to which the Omaha District has disregarded commitments it made in the PA and the resulting consequences this has had for irreplaceable resources under its care. The council is forced to conclude that the Corps is unable, or unwilling to carry out the terms of the PA.*

Cathryn Buford Slater, Chairperson, National Advisory Council on Historic Preservation, Letter to Louis Caldera, Secretary of the Army, dated July 17, 2000, p. 2.

The NHPA requires that "such properties... are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values..." 16 U.S.C. §470h-2(2)(B). Moreover, the defendants' "preservation-related activities (must be) carried out in consultation with ... Indian Tribes." 16 U.S.C. §470h-2(2)(D).

The RDEIS fails to address this matter at all. There should be one or more "Cultural resources protection alternative" in the RDEIS. The document contains numerous alternatives for protection of threatened and endangered species - there is an entire set of such alternatives denominated as the GP alternatives. However, there is no similar consideration of the need to protect Native American cultural resources, notwithstanding the statutory responsibility of the Corps to protect these sites. Legal 63 Other 148

In the RDEIS, the Corps mistakes "destruction" for "protection." The RDEIS states on page 7-183, CR 28

> *Undiscovered sites within the lake have already been damages to some extent by inundation; however, inundated sites are somewhat protected from the adverse effects of shoreline erosion and looting.*

COE RDEIS, 7-183.

The inundated sites are completely destroyed, by definition. This constitutes a violation of section 106 of the NHPA, as evidenced by the Advisory Council termination of the Programmatic Agreement. CR 11,16

The RDEIS states -

> *The assumption for potential erosive action was that the site had to be within 3 feet above and 5 feet below the water surface of the lake to be effected by erosive forces.*

COE RDEIS, 7-183.

Under the Current Water Control Plan, Lake Oahe is subject to fluctuations of over 20 feet. The intrasystem regulation of the upper reservoirs and the spring rise provided under the GP alternatives shall exacerbate the fluctuation in water levels. Accordingly, the 8 foot zone of study for erosive effects is far too narrow, and significantly understates the actual impact on the resource. It must be broadened, to 30 feet, to adequately account for the increased damage under the GP alternatives. Otherwise, actual erosive impacts are not included in the model. CR 7, 8,

In the RDEIS, 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.

Nevertheless, the entire framework for these analysis on pages 7-183 - 7-185 is flawed. Due to lack of consultation with Tribes as required under the NHPA and NAGPRA, there is a substantial amount of information in this area which the COE does not possess. The scope of the survey is too limited. For those sites which have been identified, the COE does not properly identify the significance of the sites.

CR 6,11,16, Other 148

In the RDEIS, the Corps fails to adequately consider the need to protect these sites. As is evidenced by the Advisory Council termination of the Programmatic Agreement, the Corps is in violation of these requirements, under the Current Water Control Plan. None of the other alternatives contained in the RDEIS contain more protections. The RDEIS provides no provision whatsoever for compliance.

CR 11,16, 17

Ultimately, the NHPA and NAGPRA require that 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.

The RDEIS makes no provision for this. It violates the National Historic Preservation Act and Native American Graves Protection and Repatriation Act. The Standing Rock Sioux Tribe stands prepared to defend our rights under these laws.

Legal 64

IV. Failure to Account for and Mitigate Environmental Damage on the Standing Rock Indian Reservation

The RDEIS fails to account for and mitigate the environmental damage on the Standing Rock Indian Reservation. This includes the destruction of Tribal communities on the Standing Rock Reservation, harm to plant and wildlife resources, flood damage in Wakpala, erosion of Tribal lands along Lake Oahe, and water quality in Lake Oahe. There are no provisions to mitigate this damage.

Legal 65

The DEIS ignores the widespread destruction caused by the Pick-Sloan project on our 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."

Other 330

After the destruction of the buffalo herds and the establishment of the Reservation lifestyle at the turn of the century, the economy on the Standing Rock Reservation depended in large part on the natural resources found in the

Missouri River bottomlands. The riparian area along the Missouri contained shaded grazing land and accessible water. Wildlife was abundant. Timber was available for fuel. Several communities on the Standing rock Reservation relied on these resources, and became economically self sufficient, well into the twentieth century.

The Pick-Sloan program destroyed these resources on the Reservation. Four communities on Standing Rock were relocated in whole or in part. 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), pp. 29, 56-7.

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. Other 330

Prior to construction of Oahe Dam, the plant life in the Missouri River bottomlands on the Reservation enhanced the quality of life for our Tribal members. The draws carved into the riparian area at the crest of the river bottom contained cherry bushes and plum trees. There were abundant choke cherries, sand cherries and buffalo berries in the wooded bottomlands on the Reservation. These plants were harvested by Tribal members for subsistence. They have diminished dramatically.

There were other plants used for subsistence food purposes, in the bottomlands. This includes onions, wild turnips, Elm Cap (*Pleurotus Ulmarius*), Baby's Navel, a mushroom, Arrowleaf, wild rice, Pursh and Bulrush.

Yet other plants, such as Cedar, were used for ceremonial purposes. Medicinal plants located in the river corridor included Pursh, Twin-flower, and clover and other roots. Gilmore, *Uses of Plants by the Indians of the Missouri River Region* (1977).

Trees were more abundant in the old flood Missouri flood plain. There were more abundant cottonwoods and willow trees, and more cedars in the draws above the flood plain.

These plants have important ceremonial uses. Cedar is used in the sweat lodge ceremony. Cottonwood is used at the center of perhaps the most important Lakota ceremony, the Sun Dance.

There was more diversity of the native grasses. The native Common Reed Grass, Prairie Cordgrass, Foxtail Barley, Green Muhly and Inland Saltgrass were more abundant. Non-native species are more common today.

Big game herds were more abundant and consistent. Mule deer and white tail deer, the most common big game on the Reservation, were much

more abundant in the wooded bottomlands. Fur bearers, such as white-tailed and black-tailed jackrabbits and eastern and desert cottontails were more concentrated and accessible.

Tribal members used to travel to the river bottom from throughout the Reservation, for subsistence hunting. The ecosystem has been destroyed, and now there is more upland game hunting. The methods and patterns of subsistence hunting, and gathering of plants and berries, has been completely disrupted. The Environmental Impact statement must state this, and contain a plan for mitigation. Other 330

There is severe periodic flooding at Wakpala, in the lower reach of Oak Creek just two miles from its confluence with the Missouri. The Corps of Engineers disputes Standing Rock's concern that the impoundment of water at Oahe Dam contributes to the conditions that exacerbate flooding at Wakpala. FC 35

The entire area surrounding the mouth of Oak Creek is now part of Oahe Reservoir. The patterns of erosion and sedimentation have been altered. The Corps of Engineers must evaluate this in the Environmental Impact Statement. In calculating flood control savings for the lower Missouri basin, the Corps fails to include the cost of flooding at Standing Rock.

Other Tribal lands and trust allotments above the take line get flooded by the Missouri River.

The Corps must revise its values for flood control, taking into account flood damage caused in part by COE operations. At the very least, mitigation of flood damage at Wakpala should be proposed and planned.

Tribal lands and trust allotments above the COE take line are eroding, due to the operation of Lake Oahe. This results in potential liabilities on the part of the Corps, in favor of the Tribe and Tribal members. The Corps does not account for these liabilities in its valuations of NED benefits. The Corps must adjust the values downward to reflect this damage. Mitigation of erosion should be proposed and planned.

The RDEIS fails to profile the current water quality baseline of the Missouri River, or to explain the impacts of the various alternatives on Lake Sharpe water quality. The RDEIS should also state that the Standing Rock Sioux Tribe has instituted use designations and Tribal water quality standards for the Missouri River.

V. RDEIS Violates Executive Order 12898 and Executive Order 13175

Executive Order 12898 on Environmental Justice requires mitigation of disproportionate impacts of federal actions on minority and impoverished communities. The Draft EIS fails to comply with the requirements Executive Order 12898.

The major components of every operational alternative have disproportionate environmental impacts on Indian Tribes. The Fort Peck Spring rise, included in every alternative, disproportionately impacts the Assiniboine and Sioux Tribes of the Fort Peck Reservation. The unbalancing of reservoir levels disproportionately affects the Standing Rock Sioux Tribe. Legal 66

We strenuously object to the instrasystem regulation scheme involving Lake Oahe on our Reservation. Lake Oahe water level fluctuations detrimentally impact Native American cultural resources on the Standing Rock Indian Reservation. Now, without mitigation or consultation, the RDEIS proposes to write into the new master manual a system of intrasystem reservoir regulation that shall exacerbate water level fluctuations on our Reservation. CR 7 Rec 22

The Standing Rock Sioux Tribe has already suffered enough for downstream navigation and flood control. Now, because of the harm caused by the provision of navigation flows to upper reservoir fisheries, our Reservation is proposed to be used for an unbalanced reservoir regulation system designed to purposely intensify the fluctuations in water levels. This threatens our water intakes and fishing opportunities for Tribal members, in favor of off-Reservation fish enhancement and recreation opportunities for non-Indians. WS 8 Fish 17 Rec 16

This is environmental racism against our people. Executive Order 12898 prohibits this.

Moreover, here has been no government-to-government consultation with our Tribe as required in Executive Order 13175. Executive Order 13175, entitled Consultation and Coordination With Indian Tribal Governments requires the Defendant to engage in "meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications." 65 Fed. Reg. 67249 (Nov. 9, 2000). This results from the fact that "The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions." *Id.* Accordingly, Executive Order 13175 provides that "Agencies shall respect Indian tribal self government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique relationship between the Federal Government and Indian Tribal governments." *Id.* Tribal 28

The preparation of the Draft EIS, the Defendant must also comply with the Department of Defense American Indian and Alaska Native Policy. The Policy states in part - Legal 67

> DoD personnel must consider the unique qualities of individual Tribes when applying these principles.... (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.

U.S. Department of Defense, *American Indian and Alaska Native Policy* (emphasis added).

The RDEIS proposes to supply water for downstream navigation and endangered species that is subject to the Winters Doctrine claims of our Tribe. The proposed unbalancing of reservoirs included in the GP and MCP alternatives exacerbates water level fluctuations on the Standing Rock Indian Reservation, damaging our environment and fishing opportunities in order to enhance off-reservation fisheries for non-Indians. Accordingly, compliance with Executive Order 13175 is required. Fish 17 Legal 68

However, no decisionmaker has consulted with Chairman Murphy and the Standing Rock Tribal Council. The Corps has used a revolving door of Omaha District or Northwestern Division Commanders to conduct meetings with the Tribe, who merely state that they "shall inform their superiors" of the Tribe's concerns. Tribal 28

The Tribe's concerns are never addressed. They are merely packaged in an appendix to the Environmental Impact Statement.

Colonels come and go. There is no genuine consultation for the Tribe with decisionmakers in the Corps. Tribal 13, 28

Racism and oppression by the Corps of Engineers against the Standing Rock Sioux Tribe remains constant. The RDEIS is more of the same.

Pursuant to Resolution 106-01, the Standing Rock Sioux Tribe rejects the Corps of Engineers' Revised Draft Environmental Impact Statement as an attempt to justify the confiscation of our water in favor of navigation, recreation and environmental concerns. The RDEIS constitutes environmental racism at its worst. It is rejected in its entirety.

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

Legal 69

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 reinitiation 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

Legal 70

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

Legal 71

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

Legal 72

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. Mary's 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 Holder's Assistant and Land Office Guide.*

> *Islands, Islets, and limits aforesaid...*(Source: John Kilty. *Land Holder's 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 discovers; 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 that 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 Roncallo, 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 Britian 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 withdrew 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 I 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 out "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 are 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 II] 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 in violable: 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 homes 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 writhe 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

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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

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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 evil 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 wame (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

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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 anc 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.

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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.

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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)

T1100001

February 28, 2002

Brigadier General David A. Fastabend
Commander and Division Engineer
U.S. Army Corps of Engineers
Northwestern Division
PO Box 2870
Portland, OR 97208-2870

RE: Comments on the Revised Draft Environmental Impact Statement for the Missouri River Master Water Control Manual

Dear Brigadier General Fastabend:

I thank you and the Project Team Members for the Missouri River Master Manual Review and Update for the opportunity to provide comments on the alternatives proposed in the Revised Draft Environmental Impact Statement (RDEIS) Report.

The Fort Belknap Indian Community's comments on the RDEIS will focus on the following areas:

- Lack of Data on the Alternative's Impacts on Tribes
- RDEIS Comment Period
- Impacts the RDEIS Alternatives would have on the Tribes
- Mitigation
- Recommendations

Lack of Data on the Alternative's Impacts on Tribes
Under the National Environmental Policy Act (NEPA), the Corps must compile and analyze the history, socioeconomic conditions, cultural resources, and environmental baseline conditions of the affected Indian Tribes. Although the RDEIS is an extensive document, it does not include an adequate assessment of the alternative's impacts on tribal concerns. The Mni Sose Coalition submitted comments on September 1993, September 1994, March 1995, June 1999, and September 1999 on the inadequacy of the treatment of the tribal economic, environmental, and historic resource impacts of the alternatives outlined in the PDEIS and PRDEIS. However, the RDEIS still does not include sufficient data for most Tribal Leaders to provide meaningful comments on the proposed alternatives.

Tribal 22
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The models do no properly articulate the difference between the states economies and tribal economies. There is a need for an Indian economic component in a *regional* analysis as opposed to a national economic development. The September 1999 document mentioned in the previous paragraph included a proposal whereas the Mni Sose Coalition would accumulate data and analyze of impacts on social-economic, environmental data, historic resource information.

Tribal
1,2,3,5,6

RDEIS Comment Period
Although the six-month comment period for the RDEIS is considerably longer than required under the National Environmental Policy Act, the Fort Belknap Indian Community does not believe six months is a long enough time-frame for the Tribes to analyze the RDEIS. At the Mni Sose Coalition's January 2002, Board of Directors meeting, which the Fort Belknap Indian

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Community is member, passed Resolution No. 02-11, which requests a 60-day extension to the RDEIS comment period. The resolution was submitted to your office on January 25, 2002. As of today, we have not received a response to the extension request.

Impacts the RDEIS Alternatives Would have on Tribes in Relation to the Current Water Control Plan (CWCP)
Based upon the information provided in the RDEIS study, a number of generalities can be made regarding the impacts the Modified Conservation Plan (MCP) and the four Gavins Point (GP) alternatives would have on all the Tribes located in the Missouri River Basin, in relation to the CWCP. Those impacts are listed below:

Advantages—The MCP and GP Alternatives would:
- Improve the chances of survival for the piper plover, the interior least tern, and the pallid sturgeon;
- Increase the quality of recreational use, particularly along the Upper Missouri River;
- Improve drought conservation;
- Increase coldwater fish habitat;
- Enhance native river fish habitat; and
- Expand wetland habitat.

Disadvantages—The MCP and GP Alternatives would:
- Adversely impact tribal cultural resources and Native remains;
- Provide less flood control;
- Increase damage to interior drainage;
- Increase crop damage;
- Reduce warmwater fish habitat;
- Diminish riparian acreage;
- Increase spillway releases, which could lead to supersaturation of dissolved gases in the downstream river reach; and
- Increase hydropower costs from 3% to 13 % (under the GP alternatives; the MCP alternative would slightly decrease hydropower costs);

Two of the disadvantages, in particular, need further discussion:

1. Adverse Impact to Cultural Resource and Native Remains
   The RDEIS does not focus on the alternatives' impacts on tribal cultural resources and Native remains, other than stating that cultural resources may be impacted by any or all of the options, depending on location, type, elevation, and proximity to the riverine environment. The RDEIS does not include adequate research on the impacts the alternatives would have on tribal cultural resources and Native remains.

   CR 6, 12,17

2. Increased Hydropower Costs
   The National Economic Development (NED) analysis utilized by the Army Corps, which indicates the GP and MCP alternatives would produce increased hydropower benefits is flawed in that the analysis does not look at the cost to the customers. Based upon Western Area Power Administration's analysis of the RDEIS, tribal customers could see increases of between 3-13% under the GP alternatives (Under the MCP alternative, customers would see a slight decrease in hydropower costs.)

   Hpower 12

   Historically, the Tribes in the Missouri River Basin have borne a disproportionate burden of the environmental, cultural, and economic costs associated with the Pick-Sloan project. Ironically, these Tribes pay some of the highest energy prices in the country, despite their high poverty rates. After years of negotiations, 25 of the Missouri River Basin Tribes now receive low-cost, federally generated hydropower from Western Area Power Administration. If one of the GP alternatives is selected by the Army Corps, tribal citizens will see their energy bills increase by up to 13 %. The Tribal hydropower benefits would essentially be wiped out.

Mitigation
Under the Executive Order on Environmental Justice, the Corps must propose plans to mitigate the impacts of its operations on the Tribes, because of the disproportionate impact of its operations on Native American communities. However, none of the alternatives outlined in the RDEIS address mitigation measures.

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Fort Belknap Indian Community's RDEIS Recommendations:
- Work with the Mni Sose Coalition to compile and incorporate the requisite tribal data into the RDEIS. A multi-year plan should be developed and implemented to ensure the Corps possesses and considers tribal data that is required by NEPA.
- Extend the comment period for the RDEIS for an additional 60 days to allow the Tribes and other stakeholders with additional time to analyze the effects of the proposed alternatives;
- Coordinate with Tribes on mitigation efforts for impacts to cultural sites of the proposed alternative.

The Fort Belknap Indian Communtiy appreciates the opportunity to voice its concerns regarding the RDEIS and is willing to work with the Army Corps of Engineers to ensure that tribal concerns are addressed in the Master Water Control Manual.

Sincerely, Benjamin Speakthunder President VIA email [h2otribe@ttc-cmc.net]