

# **MEMORANDUM OF UNDERSTANDING**

## **Red River Valley Water Supply Project EIS**

### **I. AUTHORITY**

On December 15, 2000, the 106<sup>th</sup> Congress passed the Dakota Water Resources Act of 2000 (DWRA), which was signed into law on December 21, 2000. This 2002 Memorandum of Understanding (MOU) is intended to implement the provisions of the DWRA as specifically outlined under Sections 5(a)(5) and 8. Sections 5(a)(5) and 8 of the DWRA authorize the Red River Valley Water Supply Project. Section 8 (b)(1) of Public Law 106 554 states “The Secretary of the Interior shall conduct a comprehensive study of the water quality and quantity needs of the Red River Valley in North Dakota and possible options for meeting those needs.”

In addition, “Pursuant to an agreement between the Secretary and State of North Dakota as authorized under section 1(g), not later than 1 year after the date of enactment of the Dakota Water Resources Act of 2000, the Secretary and the State of North Dakota shall jointly prepare and complete a draft environmental impact statement concerning all feasible options to meet the comprehensive water quality and quantity needs of the Red River Valley and the options for meeting those needs . . .” (Section 8 (c)(2)(A)). “Not later than 1 year after filing the draft environmental impact statement, a final environmental impact statement shall be prepared and published” (Section 8 (3)(A)). “If the Secretary and State of North Dakota cannot prepare and complete a final environmental impact statement within 1 year after the completion of the draft environmental impact statement, the Secretary, in consultation and coordination with the State of North Dakota, shall report to Congress on the status of this activity, including an estimate of the date of completion”(Section 8(3)(B)).

### **II. PURPOSE**

In accordance with the DWRA this 2002 MOU establishes the Secretary of the Interior and the State of North Dakota as a co-lead agencies relative to joint preparation of the Red River Valley Water Supply Project environmental impact statement (EIS). This MOU supercedes and replaces the MOU signed in July 2000 by Reclamation, the Garrison Diversion Conservancy District (GDCD), and the State Water Commission. Certain roles and responsibilities associated with the development of the EIS are inherently federal functions and will exclusively remain with Reclamation as the lead Federal agency. These specific study roles or tasks are identified under Section VIII, Roles and Responsibilities, of this agreement.

### **III. BACKGROUND**

Development of a reliable water supply for eastern North Dakota and the Red River Valley has been a subject of great interest to residents of eastern North Dakota, government agencies, and entities concerned with water management and development. Although rivers in eastern

North Dakota are prone to flooding and excessive runoff, there are also periods of low flow and drought conditions.

As an outcome of the North Dakota Water Management Collaborative Study, Reclamation began a phased planning study in 1994 to investigate and evaluate the existing and future water needs of the Red River Valley area. The first phase (Phase IA) of this investigation was completed in April 1998 with an appraisal-level municipal, rural, and industrial (MR&I) water needs assessment. An additional aspect of the first phase was the final Phase IB report dated August 1999 that addressed instream flows in the Sheyenne and Red Rivers. In January 2000, an appraisal-level study (Phase II report) of alternatives to meet the MR&I needs was completed. The Phase I and II reports provide an initial basis for undertaking more detailed analyses.

In July 2000 prior to the enactment of DWRA, Reclamation, State Water Commission, and GDCD signed an MOU creating a Study Management Team. The purpose of the July 2000 MOU was to provide a framework for conducting more detailed studies. That July 2000 MOU is terminated and replaced with this 2002 MOU and related agreements intended to implement the provisions of the DWRA as specifically outlined under Sections 5 and 8.

#### **IV. ORGANIZATION**

This 2002 MOU will be administered through a partnership between the State of North Dakota and Reclamation. The State of North Dakota designates the GDCD to represent its interests in this agreement. The purpose of the partnership is to jointly prepare the EIS for the Red River Valley Water Supply Project. The co-lead agencies are Reclamation and GDCD.

The co-lead agencies are responsible for all aspects of EIS preparation. The co-lead agencies will jointly form an EIS Interdisciplinary Team to prepare the EIS. The co-leads will select staff or consultants based upon technical expertise to serve as core team members on the interdisciplinary team. The co-lead agencies may invite staff from cooperating agencies to participate on the EIS Interdisciplinary Team. The expertise required for the core team will be determined by the co-lead agencies based on major issues identified through the scoping and public involvement process. Core team members will work together on a daily basis and meet frequently during preparation of the EIS. The team can request specialized expertise to assist in addressing highly controversial or complicated issues. All tasks or data collection required for completion of the EIS will be assigned through the EIS Interdisciplinary Team.

To assist in the development of the EIS and in accordance with law, the co-lead agencies will continue to seek input from the general public and stakeholders and will establish a Cooperating Agency Team for the EIS. The Cooperating Agency Team will be composed of representatives of agencies invited to participate in accordance with NEPA on the Red River EIS. Agencies are invited to be a cooperating agency by the co-lead agencies based on regulatory authority or special expertise. Agencies may be Federal, State, tribal, or local governments. The purpose of the Cooperating Agency Team is to make recommendations to the co-lead agencies about the EIS process and to assist in preparation and review of the EIS.

## **V. OPERATING PRINCIPLES**

The operating principles for the co-lead agencies are as follows:

- C Co-lead agencies will meet monthly or as needed.
- C Organizational contacts will be identified under an operating protocol.
- C The public will be appropriately notified of open meetings.
- C Participants are GDCD and Reclamation.
- C Public may attend meetings and will be given an opportunity to ask questions or make statements at the end of the meeting.
- C Decision-making will be cooperative and in accordance with Section VII of this MOU.
- C Co-lead agencies will fully consider any recommendations and guidance from the general public, stakeholders and the Cooperating Agency Team.
- C Meeting agenda will be developed prior to the meeting.
- C Draft meeting minutes will be prepared by Reclamation and final minutes will be distributed once approved by the co-lead agencies.

## **VI. PRIMARY CONTACTS**

The primary Reclamation contacts for implementation of this 2002 MOU are the Area Manager of the Dakotas Area Office for technical issues and the Deputy Regional Director of the Great Plains Region Office for policy issues. The Governor of the State of North Dakota has authorized the GDCD to be the State's primary contact to serve as co-lead for North Dakota on the EIS. The GDCD will consult regularly with the Governor to be sure that the Governor, State Water Commission, and other State agencies remain informed. The State Engineer will continue to be responsible for interstate, international, and general policy issues.

## **VII. DECISIONMAKING PROCESS**

Reclamation is the lead federal agency for the Red River Valley Water Supply Project. The co-lead agencies will agree on the scope and jointly complete the EIS. When issues arise in which there is an impasse within the Interdisciplinary Team, the problem will be elevated to the co-lead managers, Dakotas Area Office Area Manager and Manager of GDCD for resolution. In the event that the managers cannot reach an agreement, the issue will be referred to the Regional Director and the Governor of North Dakota. If still unable to reach a cooperative decision, the issue will be referred to the Reclamation Commissioner whose decision will be final.

Regarding the selection of the preferred alternative, "after reviewing the final report required by subsection (b)(1) and complying with subsection (c), the Secretary, in consultation and coordination with the State of North Dakota in coordination with affected local communities, shall select 1 or more project features described in subsection (a) that will meet the comprehensive water quality and quantity needs of the Red River Valley" (Section 8(d)(1)). The Secretary's decision will be final.

## VIII. ROLES AND RESPONSIBILITIES

Reclamation is the lead Federal agency for the EIS in compliance with the NEPA. It is the responsibility of the co-lead agencies to work collaboratively with all interests to implement the specific provisions of DWRA covered under this 2002 MOU. The co-lead agencies will monitor progress and provide general direction for the EIS.

The co-lead agencies will be responsible for overall guidance, developing plans and schedules for completing work items, financial issues, and deliberating and framing difficult issues for ultimate resolution. The co-lead agencies will work under the 2002 cooperative agreement for the Red River Valley Water Supply Project. This will be the vehicle for Federal funding of North Dakota or GDCD activities, as appropriate, that sets forth the responsibilities of the State of North Dakota. The roles of the lead federal agency (Reclamation) and the co-lead agency (State of North Dakota) are as described in NEPA, Reclamation's *National Environmental Policy Act Handbook*, the *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (40 CFR 1500-1508)*, and *Dakota Water Resources Act*.

## IX. TERM

This 2002 MOU will remain in effect for an undefined time period beginning with the implementation of the MOU and ending when the co-lead agencies complete the final EIS. The July 2000 MOU is terminated and superceded upon full and final execution of this 2002 MOU.

Either party may terminate their involvement in this 2002 MOU through a 60-day written notification to the other party.

## X. EFFECTIVE DATE

This 2002 MOU shall be in force and effect upon execution by the undersigned participants.

IN WITNESS HEREOF, the undersigned have caused this 2002 MOU to be executed in accordance with the terms of this document.

GOVERNOR, STATE OF NORTH DAKOTA

By: \_\_\_\_\_ Dated:

REGIONAL DIRECTOR, GREAT PLAINS REGION, BUREAU OF RECLAMATION

By: \_\_\_\_\_ Dated: