



IN REPLY REFER TO:

**United States Department of the Interior**  
 BUREAU OF INDIAN AFFAIRS  
 Midwest Regional Office  
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**APR - 6 2006**

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FOLDER I.D.		

April 3, 2006

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

Dear Sir or Maam:

Subject: Comments on the Draft Environmental Impact Statement (DEIS) for the Red River Valley Water Supply Project.

The Bureau of Indian Affairs appreciates the opportunity to comment on the DEIS and provides the following comments and concerns.

- Due to the regional scope of the DEIS with both inter and intra basin alternatives the DEIS in its current form seems more like a programmatic EIS and not a site specific EIS. Therefore a site specific EIS or EIS(s) should be developed once a preferred alternative is selected from the proposed alternatives. This will allow for a greater level of detailed study on the impacts of the preferred proposal.
- The Government to Government consultation with Minnesota Tribes affected by the proposal did not appear sufficient. This is not in keeping with the Secretary's and Bureau of Reclamations trust responsibilities. It is also our understanding that the Red Lake Nation was a part of Technical Team for the project only after a staff member from Red Lake began attending the meetings and not through an invitation from the lead agency. See the enclosed copy of E.O. 13175. We recommend that tribes be specifically invited to consult. Further, the invitation should ask how the Tribe would prefer to consult for a specific issue.
- The DEIS (page 133) discusses in only a cursory manner the impacts various alternatives would have on tribal trust resources, including hunting, fishing and water rights. Although the DEIS acknowledges that the Bureau of Reclamation policy is that these rights, called Indian Trust Assets, may be impacted the discussion centers on water rights with no discussion on the impacts to fisheries in this section. Further study of the preferred alternative through a site specific EIS would be required to determine these impacts. These may include fishery related disease and invasive exotics. Finally, the costs of dealing with these transfers would be borne primarily by the impacted tribes with no assistance from responsible parties. Environmental Justice (page 141) issues arise when a disproportionate amount of the percentage of total impacts imposed on a specific group is greater than the percentage of those impacts of the total population. No discussion of costs to fisheries or other Indian Trust Assets is given in this section and should be expanded.
- The DEIS does not appear to factor the impact of a multi-basin drought occurring. If a drought similar to that of the 1930's were to occur it is conceivable, in fact, likely the conditions would be occurring in basins neighboring the Missouri River Drainage.

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- The planning horizon of the project is the year 2050. This extended planning horizon leads to decreases in the confidence of the data being analyzed. In particular there appears to be some discrepancy regarding the growth rate for the basin provided by the U.S. Census Bureau and the growth rate provided by the consultant used for the project. With growth being a primary tenant of the need for the project further analysis of the growth potential to clarify these large discrepancies would seem appropriate.

Again thank you for this opportunity to comment on the Draft Environmental Impact Statement for the Red River Valley Water Supply Project. This project is of great interest to both the Bureau of Indian Affairs and the Tribes potentially affected. We would sincerely appreciate continued updates to the status of the project. If there are any questions regarding these comments please contact Scott Doig, Environmental Protection Specialist at 612-725-4514.

Sincerely,



Terrance Virden  
Regional Director

Copy:  
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## Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments

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Presidential Documents

Title 3--  
The President

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Executive Order 13175 of November 6, 2000

### Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfounded mandates upon Indian tribes; it is hereby ordered as follows:

#### Section 1. Definitions. For purposes of this order

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior

acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502, other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502.

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) 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. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

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(a) 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 legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall

(1) encourage Indian tribes to develop their c policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the for Federal standards and any alternatives that w limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Propc Agencies shall not submit to the Congress legislat that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation. (a) Each agency shall have a accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this or the head of each agency shall designate an officia with principal responsibility for the agency's implementation of this order. Within 60 days of th effective date of this order, the designated offic shall submit to the Office of Management and Budge (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by no agency shall promulgate any regulation that has tribal implications, that imposes substantial dire compliance costs on Indian tribal governments, and is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tr in complying with the regulation are provided by t Federal Government; or

(2) the agency, prior to the formal promulgati the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the pre to the regulation as it is to be issued in the Fed Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of t nature of their concerns and the agency's positior supporting the need to issue the regulation, and a statement of the extent to which the concerns of t officials have been met; and

(C) makes available to the Director of OMB any w communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by

no agency shall promulgate any regulation that has tribal implications and that preempts tribal law until the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the

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need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

#### Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practical and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible procedures at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practical and permitted by law, render a decision upon a completed application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

#### Sec. 7. Accountability.

(a) In transmitting any draft final regulation

has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. General Provisions. (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform Act), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is reauthorized at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

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Sec. 10. Judicial Review. This order is intended to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

(Presidential Sig.)

THE WHITE HOUSE,

November 6, 2000.

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