

RED RIVER VALLEY WATER SUPPLY PROJECT

TRANSCRIPT OF  
PUBLIC HEARING

Taken At  
Prairie Knights Casino & Resort  
7932 Highway 24  
Fort Yates, North Dakota  
March 1, 2007

BEFORE BUCK FEIST  
-- HEARING OFFICER --

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A P P E A R A N C E S

PRESENTERS:

WAYNE LOOKING BACK  
TIM MENTZ, SR.  
CHAIRMAN RON HIS HORSE IS THUNDER  
BYRON OLSON  
RALPH WALKER  
MICHAEL CATCHES ENEMY

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1           (The following proceedings were had and  
2 made of record herein, commencing at 7:37 p.m.,  
3 Thursday, the 1st day of March, 2007:)

4           MR. FEIST: As I mentioned, this hearing  
5 is being held in accordance with the National  
6 Environmental Policy Act. And once again, my name  
7 is Buck Feist, and as your hearing officer, I am  
8 now formally opening the public testimony phase of  
9 this public hearing.

10           During this portion of the meeting a court  
11 reporter will be recording the proceedings. We ask  
12 that you please restrict your verbal comments to  
13 approximately five minutes.

14           I would like to reiterate that at this  
15 hearing we are accepting both verbal and written  
16 comments on the Red River Valley Water Supply  
17 Project Draft Environmental Impact Statement. We  
18 will be taking public comment through March 26th.

19           Now, this hearing will proceed in the  
20 following manner. I will call speakers to the  
21 microphone. If I call your name and you're not in  
22 the room, you'll be moved to the end of the  
23 speakers' list. Each speaker will have a maximum  
24 of five minutes, and as comments are being  
25 recorded, we would ask that the audience maintain

1 quiet and not interject in any way during the  
2 speaker's testimony. And we'd also ask that you  
3 please turn off your cell phones during the  
4 hearing.

5           If you have extensive comments, please  
6 summarize those during your allotted five minutes  
7 and then submit the full version in writing. When  
8 it is your turn to speak, please clearly state your  
9 name and affiliation, if any. Please remember that  
10 this is a formal hearing and a court reporter is  
11 recording your comments, so it's important that you  
12 speak clearly so your comments are captured  
13 accurately.

14           And, also, if you don't feel comfortable  
15 standing up in front of the group but would still  
16 like to make verbal comments, you can come up after  
17 the hearing is concluded and present your comments  
18 personally to our court reporter.

19           So with that, unless there are any  
20 questions about this process, we're ready to begin.

21           MR. MENTZ: I have a question to your  
22 process. Rather than going right now with the  
23 names, we do have the chairman -- or the chairman's  
24 supposed to be here for the Standing Rock Sioux  
25 Tribe. I don't know if he's here. Is he here?

1       Could we have the Tribe give their position first  
2       just out of respect for the council and the  
3       chairman, if somebody's here delegated to give the  
4       Tribe's position? I think that would be the right  
5       protocol process.

6               MR. FEIST: Certainly. That's what we  
7       were --

8               MS. SNORTLAND: That's how we normally  
9       organize it, anyway.

10              MR. FEIST: Yeah. So do we want to wait  
11       until he arrives?

12              MR. MENTZ: Unless somebody's here to give  
13       his --

14              MR. FEIST: Do we have a delegate here  
15       tonight for him? So do we want to just take a  
16       short break or --

17              MS. SNORTLAND: We can wait. It's up to  
18       you, Tim.

19              MR. MENTZ: No. Just keep going.

20              MR. FEIST: It's your guys' meeting, so  
21       whatever you --

22              MR. MENTZ: Okay. Well, just go on your  
23       list then.

24              MR. FEIST: Okay. All right. Well, with  
25       that, our first speaker is Mr. Wayne Looking Back,

1 who is chairman of the Wakpala Local District, and  
2 if you could please approach the microphone. And  
3 if you could please restate your name and  
4 affiliation for the court reporter, I'd appreciate  
5 it.

6 MR. LOOKING BACK: My name is Wayne  
7 Looking Back. I am the chairperson for the Wakpala  
8 District on Standing Rock. We are located on the  
9 South Dakota side. My comments are right now  
10 according to the Corps of Engineers, Wakpala  
11 District will be without water come August. We do  
12 not have -- we have -- right now we are trucking  
13 water to 11 people -- 11 households that do not  
14 have water. They have a pipeline down there. It  
15 has not been finished.

16 And I also think that we need to take care  
17 of the people that are going to be affected now.  
18 This spring I imagine the Red River's going to be  
19 flooded again, which happens every year.

20 So I would rather see the Bureau of  
21 Reclamation do the right thing and start providing  
22 water to people that are needing it here on the  
23 Missouri River.

24 That's my comment. Thank you.

25 MR. FEIST: Okay. Thank you very much.

1 Our next speaker is Mr. Tim Mentz, Sr.

2 MR. MENTZ: Good evening. Thank you for  
3 coming. On behalf of the Long Soldier District, my  
4 name is Tim Mentz, Sr. I'm the chairman of the  
5 Long Soldier District on the Standing Rock  
6 Reservation. We're the largest district within  
7 this reservation populationwise.

8 I would like to reserve comments that we  
9 will be submitting -- written comments before the  
10 deadline, and those will be more complete than what  
11 I'm going to say. I guess I didn't know we had  
12 five minutes. I guess I thought we were going to  
13 be able to say what we can, but I'll try to  
14 summarize real quick.

15 As far as NEPA, it requires public  
16 participation, and again, just for the purposes of  
17 this NEPA process, again for the interest of when  
18 we start defining public participation, it's never  
19 definitive regarding the tribal governments or the  
20 tribal entities of these tribal governments that  
21 have a specific right and a responsibility to the  
22 residents of their reservation.

23 And, again, I'm the second community now  
24 that's getting up, and we support the Wakpala  
25 District and their quest for achieving an adequate

1 supply of water in relation to what this current  
2 project is trying to do, also.

3 We believe that the current process right  
4 now is beyond the scope of this EIS, and I  
5 understand that, where there's other issues up and  
6 down the river regarding intakes. This is an  
7 intake issue, a diversion of water, and we're  
8 concerned about that interest of our people on our  
9 tribe, not excluding all the other tribes that have  
10 a right to the Missouri River.

11 A lot of that is set in case law. We all  
12 have the same treaty date that we have in relation  
13 to those people, those bands that are tied to the  
14 1868 Treaty of Fort Laramie. And, again, we're  
15 saying those types of people, those individuals  
16 that comprise a specific tribe up and down the  
17 whole Missouri River Basin, we're concerned that  
18 they are being disconnected, and these types of  
19 projects and these EIS's through this NEPA process  
20 is disconnecting tribes that are not living along  
21 and adjacent to this river, and I understand that  
22 you have identified tribes, but again, to just  
23 consult and go after three tribes currently that  
24 are listed in this document is inadequate.

25 Overall, the EIS is totally inadequate.

1 It's not done in the interest of what the project's  
2 purposes are for. It's for supplying water to  
3 residents in the State of North Dakota when, in  
4 fact, Standing Rock Sioux Tribe goes into the  
5 States of North and South Dakota.

6           And at these points in time that we come  
7 to right now -- at this point in time tonight we're  
8 saying that we have a serious problem on the  
9 Missouri River, and this EIS does not even consider  
10 that, doesn't take the effects of the droughts  
11 situation -- the current situation that the  
12 Missouri River is experiencing, let alone  
13 compounding with the issue of diversion. And  
14 again, that amount that you're saying you're going  
15 to divert may not be inconsequential in relation to  
16 the needs and to the extent of what the arm is  
17 going to reach as far as the MR&I prompt, but the  
18 fact when we have people here on the Standing Rock  
19 Reservation that have to haul water -- right now I  
20 don't think there's anybody in the State of North  
21 Dakota right now that's hauling water, but again,  
22 it's on the reservation, and you're seeing the very  
23 effects of the Pick-Sloan plan, the 1944 Flood  
24 Control Act, and now we're seeing it in the  
25 interests of these MR&I projects under the Water

1 Resources Development Act.

2 I'm concerned -- and again, it's out of  
3 the scope of this EIS -- but again, you're mixing  
4 state MR&I projects with federal -- tribal  
5 projects, and the issue of that Indian trust asset  
6 is very serious to us. It's a concern of ours, and  
7 you inadequately addressed the issue of Indian  
8 trust assets and we're concerned about that.

9 This EIS does not address adequately the  
10 Indian trust assets that are tied to not only  
11 legislation, executive orders and statutes, but our  
12 treaty, also, and you're not considering those  
13 types of effects because you will probably say it's  
14 outside the scope of this EIS, but it's not.

15 You're talking about diverting federal  
16 water, and we have a right and a use of that  
17 federal water, but this EIS does not consider that.

18 Other federal agencies' responsibilities  
19 in relation to the Corps of Engineers is not  
20 sitting down with BOR nor do we hear it, even in  
21 consultation with the Corps of Engineers, that  
22 they're even sitting down with BOR to consider  
23 their effects. Whether it's yours that's  
24 implemented through legislation to authorize  
25 certain MR&I projects and the Corps managing that

1 water, they're not sitting together. You're sister  
2 agencies, but you sure don't look like it. You're  
3 not working together. You're working independently  
4 in the interests of those legislative acts that  
5 authorize you to do certain things.

6           Again, the two reports that come out of  
7 here are very serious in the form of concerns to  
8 effects -- to those individual rights that our  
9 people fought for. For the tribes that aren't in  
10 here today that have a specific tie to that treaty  
11 date, they aren't in here.

12           Again, selective locations. We raise this  
13 every time with the federal agencies on your  
14 selection of locations on certain water projects.  
15 Just because it's in South Dakota doesn't mean this  
16 shouldn't be taken all over Indian country because  
17 you are diverting federal water.

18           Again, I've seen tribes where they have --  
19 one in particular raised that issue as a federal  
20 takings issue. That has yet to be addressed in the  
21 form of taking a position on your responsibility as  
22 it states in the EIS, that you have a policy and  
23 you're required to fulfill that policy. The DOD  
24 policy also comes into play when you start looking  
25 at how those commitments were made in the executive

1 order, but again, you list them, you do not weigh  
2 the impacts to those types of issues on it in  
3 relation to the tribes along the Missouri River  
4 when we say we are running out of water. It has to  
5 be addressed. This EIS does not do that. It falls  
6 very short of it.

7 Water diversion in itself and the strength  
8 of what that word says particularly cripples our  
9 whole economic structure of all the tribes up and  
10 down the Missouri River Basin. You are not taking  
11 that into consideration. The environmental justice  
12 section is totally inadequate. You're only raising  
13 those issues in that population base and you're not  
14 even looking at where these people are along the  
15 Missouri River Basin. You have not weighed the EJ  
16 issues that we have in your EIS. It has to be  
17 done. This whole EIS process has to be rewritten.

18 Talking about impacts to tribes in the  
19 Basin, servicing the states instead of the tribes,  
20 you don't weigh those impacts when you're saying  
21 that interest of a state project -- and you look at  
22 the preferred alternative, it says 700-million  
23 dollars. The Standing Rock Sioux Tribe couldn't  
24 even get reimbursement when they ran out of water  
25 in '03 on their water intake system, which is still

1 at issue but not an issue to you or this EIS but  
2 has an inadvertent effect on us through other  
3 federal agencies' management of water.

4 Again, we're saying that is inadequate as  
5 far as this EIS because you do not address those  
6 issues as it relates to that trust responsibility  
7 you and the Corps carry for us tribes.

8 The low levels -- you do not weigh those  
9 low levels of the Missouri River in relation to  
10 drought conditions, and you're not taking an  
11 adequate hydrologic step on it because you totally  
12 didn't even put it in there. You talk about the  
13 hydrology of those river basins, the Red River  
14 Valley River Basin, but you do not talk about how  
15 that affects the Missouri River Basin.

16 Direct impacts. There's cumulative  
17 impacts to those low levels and elevations. You do  
18 not even address the releases that the Corps does  
19 through their annual operating plan, knowing and  
20 understanding that, yes, that is a separates issue  
21 here in relation to the master manual and their  
22 revised EIS, but again, the left hand doesn't know  
23 what the right hand is doing. You two sister  
24 agencies do not understand the impacts you are  
25 currently putting on us as tribes.

1           Water quality is a huge issue. It's not  
2 being adequately addressed in this EIS. We have  
3 water quality issues on the Missouri River. To say  
4 that you're only diverting water in the interests  
5 of trying to also treat it just to fulfill a  
6 mandate that a Federal Court had in relation to  
7 Canada is way high above -- you put the marker high  
8 above the Tribe's needs and the issues on the  
9 Missouri River, and that's also an environmental  
10 justice issue that hasn't been addressed with the  
11 issue of diversion of water.

12           When we start talking about quality, we're  
13 talking about elevations, we're talking about  
14 supply, we're talking about huge storage that we  
15 need. We need water above the intakes. When we  
16 have low water, you're not addressing that issue of  
17 the sedimentation, the movement of the  
18 sedimentation. You're not even talking about how  
19 the Corps of Engineers on the other hand is also  
20 diverting and moving sedimentation up and down the  
21 river because of their -- their section seven  
22 consultation with the U.S. Fish & Wildlife. You  
23 have not even considered those effects on the  
24 tribes, especially the ones adjacent to the river.

25           Nowhere do we ever see U.S. Fish &

1 Wildlife step into the Standing Rock Reservation  
2 boundaries. We have yet to see them come in here  
3 and let alone weigh the ESA issues that we have  
4 within this reservation boundaries. There's no  
5 weight in it, but yet you have an impact statement  
6 that clearly does not define that process, let  
7 alone put any weight to that.

8           So our issues are compounded continuously  
9 as we look at the low elevations and the releases  
10 of the water that affects the quality. Hence we've  
11 got these huge issues that in '03 -- 2003 when we  
12 went down and the water completely shut off, we had  
13 huge, enormous costs that are not even being  
14 considered. Again, environmental justice does not  
15 come into play in that. You haven't weighed those  
16 types of effects that we have incurred when we had  
17 intakes that went out completely. Let alone IHS,  
18 our medical facility, incurred over \$600,000 in ten  
19 days.

20           Those types of issues are inadvertent  
21 effects, cumulative effects that are going to  
22 continue to occur on these reservations along the  
23 river system. Even if it's the municipalities or  
24 the counties or the towns that adjacent that are  
25 pulling off from an intake off this system, they

1 are being impacted also downstream.

2           So the interests of us as downstream  
3 people above this water diversion project has not  
4 been weighed clearly and adequately from a tribal  
5 standpoint.

6           More consultation has to occur with that  
7 process. There's two processes involved with this.  
8 You've got the government-to-government  
9 consultation that's required with the tribal  
10 government. But again, you've got the interests of  
11 the tribes and the rural members of these other  
12 tribes that have a treaty right to the use of that  
13 water, and those aren't being weighed in right now.

14           We want them and we demand that those be  
15 weighed in and a new, whole EIS be considered on  
16 this issue. You have not addressed the tribes at  
17 all. You haven't fulfilled your trust  
18 responsibility when you wrote this document.

19           The EIS didn't even consider the droughts  
20 that are currently ongoing now, climatic change.  
21 It falls very short, the section on climatic  
22 change, because that is occurring. You're only  
23 saying that you can't predict what the weather's  
24 going to be, but look at the hydrology of it, and I  
25 think Mr. Olson will address that, and he has

1 addressed that with a letter to BOR looking at  
2 those types of hydrologic, climatic changes that  
3 you could have weighed in and measured more than  
4 100 years. There's data that supports that and you  
5 know what could happen, but again, it's the  
6 interest of that climatic hydrology data that's  
7 even considered -- or not considered. We want it  
8 considered. We want all of these to come up now  
9 because they have to. Climatic changes are part of  
10 the biggest issue that's going to be addressed on  
11 the Missouri River Basin, let alone that we're  
12 talking now water diversion.

13           And I would like to bring up all the other  
14 water diversionary projects, all the other intakes.  
15 You have 1600 intakes listed in this EIS that have  
16 a pipe in the Missouri River. 1600 of them. That  
17 basically quantifies 15.4 million acre-feet.

18           So as far as the Long Soldier District, we  
19 protest you allowing the state to quantify their  
20 water needs before the Tribe. You are allowing the  
21 states to go ahead, huge dollar amounts, get their  
22 MR&I projects, divert the water and you don't come  
23 and tell us, let alone do you want to address the  
24 environmental justice issues that come into that  
25 when we start talking about Indian trust assets.

1     Simply is not there.

2             Finally, the EIS inadvertently does not  
3     allow tribes to have a claim to be addressed in  
4     this process.  What I'm saying is that those types  
5     of issues that could prevail on reservations  
6     adjacent, cooling off those water systems that are  
7     sitting there, you're not considering those types  
8     of impacts, whether it's a socioeconomic impact or  
9     whether it's just a straight impact on the  
10    resources, and that resource would be water.  And  
11    you're not weighing in on what the methodology of  
12    how you're going to address that issue is.  What is  
13    the methodology?  I would like to know that.  I  
14    would like to know how you're going to weigh and  
15    consider those types of issues when you talk about  
16    other tribes that are not along the river.  And  
17    again, the Congressional intent is to keep the  
18    people that are not adjacent to the river, keep  
19    them out of the process.  That's got to stop.  
20    You've got to recognize those types of issues that  
21    tribes have.  An EIS of this nature does not  
22    address that.

23             And so, again, I'm saying those types of  
24    issues -- some of them you're going to pick and  
25    choose that are beyond the scope of this.  Other

1 ones you will not address simply because that's the  
2 way it's written right now. I'm looking at it as  
3 far as the issue of water rights and Indian trust  
4 assets, you clearly do not address it adequately.  
5 You left the tribes out of the vacuum. That's what  
6 this EIS does.

7           And I would probably end as far as  
8 cultural resources -- to the impacts of cultural  
9 resources. Yes, you did do an updated Class I, but  
10 again, in your EIS you say you will mitigate in the  
11 case -- where those types of issues of avoidance  
12 can't occur on sites, you will mitigate them.

13           But again, I want to state for the record  
14 that you cannot mitigate spirituality of tribes.  
15 You cannot mitigate a sacred site. You cannot at  
16 all tell me how much spirituality I have and  
17 whether I can walk to that, let alone define that  
18 or clarify the interests and the significance as a  
19 tribal member. You simply cannot quantify that,  
20 and you simply cannot mitigate sacred areas, should  
21 there be any of them in the corridor.

22           Again, tribal participation is required,  
23 it's needed. My issue and concern is that the  
24 destruction of cultural resources, particularly in  
25 sacred sites, significant areas, view sheds and

1 landscapes are going to be destroyed simply because  
2 they're off reservation boundaries and federal  
3 land. And here we go, we have to weigh ourselves  
4 and our interests and hope that the state law will  
5 comply or at least allow the tribes to have at  
6 least an input in that. But again, you know, state  
7 law does not require consultation but federal law  
8 does.

9           So again, keep this thing as much federal  
10 as you can. Make the laws apply on non-federal  
11 land, fee land, and keep the interests of the  
12 tribes. Because if you try to mitigate sites,  
13 you're going to have a problem because there's  
14 nobody in this -- only Takasha, the Creator, can  
15 mitigate your interests of your spirituality, not  
16 you, not BOR, not Congress. You cannot tell me  
17 that.

18           So again, in the interest of cultural  
19 resources, I think it's going to have to be very  
20 pointed, very clear on the role of BOR in relation  
21 to how you're going to avoid sites or how you're  
22 going to mitigate them.

23           That's the extent of my comments. I would  
24 make one recommendation -- that we recommend the  
25 no-action alternative based on the inadequacy of

1 addressing the trust issues, the Indian trust  
2 assets, the interests of protection of cultural  
3 sites, sacred sites. None of that has been clearly  
4 defined. You have not addressed the issue of that  
5 resource out there, what we say is our blood of  
6 life, (native language spoken), the water of life.  
7 Very significant to us.

8           If you start displacing that and  
9 de-authorizing or de-federalizing that water, then  
10 I think this is definitely beyond the scope of  
11 that, and this simply cannot occur anymore.

12           Until you take the issue of diverting  
13 federal water and taking it to the tribes, I think  
14 that's where at that point you have to stop the  
15 project and you have to see and resolve this issue.  
16 You cannot take this forward and you cannot support  
17 state interests and state MR&I huge water dollar  
18 amounts when us tribes are suffering. We're  
19 suffering and you're allowing that to happen.  
20 You're perpetuating it by allowing these types of  
21 federal projects to go through.

22           So as far as Long Soldier is concerned, we  
23 went through a fiasco here. It was a financial  
24 burden when we ran out of water. It's going to  
25 happen again. Wakpala just got up here and said

1 they're running out by August. There's a  
2 possibility that that may occur. Where are you  
3 going to be in this process? It's beyond the scope  
4 of this EIS, but where are you, BOR? Will you help  
5 us?

6 It's a separate issue, it's a different  
7 issue, but at the same time when we talk about  
8 water diversion, these are the types of issues  
9 you're going to run into at home.

10 Thank you. Appreciate it. We'll submit  
11 our comments before the deadline, but that's the  
12 extent of mine. There's probably going to be other  
13 comments that will be coming from other district  
14 reps, district councils, and I want to reserve that  
15 right for them, also, because some of them may not  
16 be here tonight. So the other district chairmen  
17 and their districts may provide testimony.

18 Thank you.

19 MR. FEIST: Thank you very much. Our next  
20 speaker is Chairman Ron His Horse Is Thunder.

21 CHAIRMAN RON HIS HORSE IS THUNDER: Good  
22 evening. I normally don't read prepared  
23 statements, but I am suffering from the flu, and so  
24 I am going to take the time here to read a prepared  
25 statement for you.

1           My name is Ron His Horse Is Thunder. I'm  
2           the chairman for the Standing Rock Sioux Tribe. On  
3           behalf of the Standing Rock Sioux Tribe, I welcome  
4           the Bureau of Reclamation to the reservation and  
5           thank the BOR for giving the Tribe the opportunity  
6           to comment on a water supply project that we  
7           believe will affect tribal members and non-members  
8           who live on the Standing Rock Reservation.

9           In order to respond favorably to the Red  
10          River Valley Water Supply Project EIS, the Standing  
11          Rock Sioux Tribe has concerns which must be met  
12          before the Tribe can agree that the Red River  
13          Valley Water Supply Project should be constructed  
14          as proposed.

15          The Tribe respectfully insists that the  
16          U.S. Government complete ongoing and authorized  
17          projects on the Standing Rock Indian Reservation to  
18          assure the Tribe's future water needs are met  
19          before we can possibly offer support to other  
20          Missouri River water diversion projects such as the  
21          Red River Valley project.

22          Diversion of water from the Missouri River  
23          to the Red River would greatly increase the  
24          likelihood that the Tribe's intakes would fail due  
25          to lower water levels. Hence, we are forced to

1 condition our position concerning the Red River  
2 Valley project on the Tribe's ability to obtain the  
3 following from the Corps of Engineers and the  
4 Bureau of Reclamation:

5 One, the development of a preemptory  
6 federal emergency action plan, including funding  
7 mechanisms for intakes on Lake Oahe.

8 Two, a plan for timely funding of the  
9 currently authorized Standing Rock MR&I system.

10 And, three, a reevaluation of the master  
11 manual with new criteria for navigational releases  
12 and maintenance of reservoir levels in Lake Oahe in  
13 view of climate change.

14 After reviewing the EIS for the Red River  
15 Valley project, except for the foregoing, the  
16 Standing Rock Sioux Tribe has not changed its  
17 position since the Draft EIS was issued.

18 The Corps of Engineers has recently  
19 forecast the Missouri River water levels to be at  
20 elevation 1562 in August of this year. The Fort  
21 Yates intake is located at 1561 and the Wakpala  
22 intake is located at 1564. If these projections  
23 hold true, the Tribe can expect another emergency  
24 water shortage like the one the Tribe experienced  
25 in November of 2003. Lowering our intakes as the

1 BOR did two years ago is only a temporary solution  
2 to decreasing water levels.

3 In addition, the Tribe is greatly  
4 concerned about the ongoing impact of climate  
5 change on the stream flows of the Missouri River.  
6 With warmer temperatures and lower precipitation  
7 generally expected in the Northern Rockies and the  
8 Northern Great Plains, the current drought can  
9 become more the new climatic norm rather than the  
10 exception. This makes the Red River Valley project  
11 demands and the ongoing procedures of the Corps of  
12 Engineers pursuant to the new Master Manual highly  
13 problematic.

14 The Tribe must insist on a reevaluation of  
15 the Master Manual and its impact on the reservoir  
16 levels in view of climate change, a subject that  
17 was not adequately addressed in the Master Manual  
18 update.

19 If we do not get these problems resolved,  
20 we have no other choice than to oppose any  
21 additional diversion projects of the Missouri  
22 River. We cannot in any way support any  
23 alternative which would pull water from the  
24 Missouri River. Those alternatives in the EIS  
25 which would not pull water from the Missouri River

1 we would not oppose.

2 As things now stand, we can only support  
3 the North Dakota In-Basin alternative and the Red  
4 River Basin Alternative of the Red River Valley  
5 project.

6 Thank you for listening to the Tribe's  
7 concerns.

8 MR. FEIST: Thank you. Did I already call  
9 Tim Mentz, Sr.?

10 MS. SNORTLAND: Yes.

11 MR. MENTZ: Do you want me to get up there  
12 again? I can do that.

13 MR. FEIST: Only if you want to. Mr.  
14 Byron Olson.

15 MR. OLSON: My name is Byron Olson. I'm  
16 the tribal archeologist under the Tribal Historic  
17 Preservation Office of Standing Rock Sioux Tribe,  
18 and I have two separate kinds of issues I'd like to  
19 raise.

20 First of all, speaking formally for the  
21 THPO office, if there's a selection made other than  
22 no action, we believe that the worst possible one  
23 to take is the Sheyenne River. In terms of  
24 cultural resources it is exponentially higher than  
25 the number of sites that are going to appear along

1 the river than any of the other options which are  
2 basically crossing prairie farmland and that kind  
3 of terrain. So in materials of cultural resources  
4 the Sheyenne River is the worst of all possible  
5 selections.

6           And I would also point out that  
7 environmentally it is a poor selection, too. I  
8 happened today to be at a meeting of the Federal  
9 DOT with the State North Dakota DOT, and just by  
10 happenstance they presented a hypothetical  
11 situation where someone's going to build a bridge  
12 across the Sheyenne River in Barnes County, and  
13 among the kinds of things that would be placed by  
14 the Highway Department on simple bridge  
15 construction would be no construction or demolition  
16 activities would take place in the Sheyenne River  
17 channel from April 15th to June 1 unless methods to  
18 avoid, minimize, or mitigate impacts to fish during  
19 migration and spawning are incorporated. You're  
20 going to be faced with that problem year in and  
21 year out because you're running down the river. So  
22 you're going to have an impact on that kind of  
23 environmental issue.

24           Another kind of commitment or concern they  
25 raised was what kind of erosion and sedimentation

1 is going to happen along the Sheyenne River and how  
2 will that affect the habitat there? Again, you're  
3 changing the flow of that river, and right now I  
4 don't know what the consequences would be, but they  
5 certainly could be adverse effects on the  
6 environment along that river.

7 Another commitment that was raised by the  
8 highway department was there will be no river  
9 channel alterations or changes in drainage  
10 patterns, and clearly, when you're increasing the  
11 velocity, increasing the quantity of river flow,  
12 water flowing down the river, you're going to have  
13 those kinds of impacts, and they're going to be  
14 impacts from your project.

15 I would point out that if you run the  
16 water through a pipeline, you don't have that, and  
17 that a pipeline is going to have -- it crosses  
18 farmland, it's a short-term impact. You reclaim  
19 the farmland and you're done with it.

20 If you run water through the Sheyenne  
21 River, you're going to have to monitor that and  
22 it's going to be for the duration of the life of  
23 the project. So we could have, for example,  
24 archeological sites washing out because of bank  
25 erosion; you could have adverse effects on fish;

1 you could have adverse effects on duck migration.  
2 So there's a whole suite of environmental problems  
3 that are raised by the Sheyenne River alternative  
4 that are not present in those alternatives where  
5 that river is not used.

6 Now let me change gears here, and I want  
7 to get back to the hydrologic model, the climatic  
8 model, and Ms. Snortland talked about some paleo-  
9 environmental data. The frequency of 1930s  
10 droughts is not a good measure. That's a very,  
11 very poor measure. Here in Standing Rock I would  
12 point out that the level of the Oahe Reservoir has  
13 dropped 50 feet and the level of Sakakawea has  
14 dropped an equivalent amount, and we haven't had  
15 anything near a 1930s drought. We've just had  
16 generalized drought conditions.

17 So you have to think not even -- you don't  
18 even have to have a 1930s drought to create real  
19 severe depletions in the river.

20 One of the other things that the model  
21 doesn't take into account is we're all talking  
22 about global warming now, and there are programs --  
23 if you want computer programs, they're out there.  
24 You can get some computer programs to say what's  
25 going to happen to the flow of the river under

1 changing climatic conditions? You can incorporate  
2 that stuff in there, and if you're enamored to  
3 scientific models, go talk to one of these guys  
4 that does the scientific modeling. That stuff is  
5 generated now -- and I've seen it on television.  
6 There's lots of opportunities for that.

7           Because of deficiencies in the model, I  
8 just wondered how -- whether it's a piece of smoke  
9 and mirrors.

10           Mr. Jay Taken Alive in a meeting with  
11 Senator Dorgan said -- we're looking at the river  
12 now -- we may be looking at the new normal, and if  
13 that's the case, then we've got some real serious  
14 problems that are just going to be exacerbated by  
15 any kind of intake that takes water out of the  
16 river.

17           Given that you're going to affect the  
18 water levels in the Missouri River system, a  
19 question that I would address to the Corps and to  
20 the BOR is simply in cases of severe depletion of  
21 the Missouri River system, what priority is going  
22 to be given to the Red River Valley intake? Is it  
23 going to have a higher priority than a tribal  
24 intake, a lower one, same? Do we all have to fight  
25 for some set of dollars to improve our intake? Of

1 course tribes are not in the position to do that.

2 Another related issue to that is the trust  
3 responsibility of the Bureau of Reclamation. Now  
4 I've been told that the BOR cannot address that  
5 issue because the Standing Rock Sioux Tribe has not  
6 quantified its water rights, and that's a true  
7 statement and we don't expect the BOR to quantify  
8 our rights, but that's a spurious argument.

9 What the BOR can do and must do is to  
10 exercise a trust responsibility over our existing  
11 intakes. They've been out there. Some of the Fort  
12 Yates intakes, in fact, have been out there since  
13 the Oahe Dam was ever created. That is a trust  
14 asset issue that the BOR can directly address.  
15 We're not talking about imponderables. We've got  
16 structures there, and it is part of the BOR's trust  
17 responsibility to make sure that those structures  
18 are still operative for the Tribe.

19 Related to that business is I do believe  
20 there is an environmental justice issue. Is this  
21 pipeline going to adversely impact a minority  
22 population, that minority population being the  
23 Indian tribes who live up and down the river?  
24 We're certainly disproportionately affected by any  
25 change in the river system, and this is one of

1 those things. You will say it's small, but it's  
2 still a disproportionate effect on a minority  
3 population. I think that's Executive Order 13008.

4 I will submit these comments in writing to  
5 you. Thank you for your time.

6 MR. FEIST: Thank you. Our next speaker  
7 is Mr. Ralph Walker.

8 MR. WALKER: Hello. My name is Ralph  
9 Walker. I'm director of Standing Rock Rural Water  
10 System. My comments are related to the option that  
11 uses Missouri River water as the source of water.

12 The statement was made in the study "Using  
13 the Missouri River system, which is the largest and  
14 most reliable source of water in North Dakota."  
15 That's far from the truth. The Standing Rock water  
16 system intakes on the Missouri River are in  
17 imminent danger of failing. The Fort Yates intake  
18 is operating under river conditions using a  
19 temporary intake. The permanent intake was  
20 destroyed by the operation of the river by the  
21 Corps of Engineers and needs to be replaced before  
22 the lake rises as the temporary one will be covered  
23 by silt and inoperable if the lake rises.

24 The Wakpala intake is projected to be out  
25 of water for the fourth year again this August,

1     which will leave the intake high and dry and about  
2     a mile-and-a-half from the river.

3             A Corps of Engineers study done last year  
4     and sent out for comment in its draft form  
5     indicated that the two intakes most likely to fail  
6     on the Missouri River water system are on Standing  
7     Rock at Fort Yates and Wakpala.

8             A statement at one of the earlier meetings  
9     regarding the Red River Valley Project was made  
10    that the diversion would drop the Garrison Dam only  
11    one foot. This would be fine if this dam did not  
12    impact any other reservoirs or the river. An  
13    elevation drop in any one dam is adjusted  
14    throughout the system which will affect our  
15    intakes.

16            A one-foot drop in a reservoir creates  
17    hundreds of feet of mud flats in the upper reaches  
18    of the reservoir. It also causes silt to move from  
19    the delta created by 30 years of operation of the  
20    dams. This is what impacted Fort Yates and will  
21    again impact it with continued river flows. There  
22    is a sandbar 60 feet in front of the Fort Yates  
23    intake that is moving downriver and will impact our  
24    intake.

25            A call for help was issued for support of

1 the Red River Valley project for water shortage  
2 that may occur in the future. We had a water  
3 crisis at Fort Yates in 2003 and operated under  
4 uncertain conditions and anticipate disaster at  
5 Wakpala in August. It would be nice if those who  
6 support the Red River Valley project would support  
7 our efforts to fund a permanent solution for our  
8 problem.

9 The Environmental Impact Statement for the  
10 Red River Valley should also include a section on  
11 impact of water diversion of Missouri River water.  
12 It should also address who will be affected, how  
13 water levels and flows will be impacted, and any  
14 changes that should be made to how the Corps of  
15 Engineers operates the dam system.

16 The issue of minimum pool levels that  
17 should be maintained should be addressed. Also,  
18 the section should include a sedimentation section  
19 regarding the Fort Yates and Wakpala intakes.

20 I cannot in good conscience recommend  
21 support for diversion of Missouri River water until  
22 a permanent solution is funded for our intakes on  
23 Standing Rock and increased funding is provided for  
24 completion of our total river water system.

25 I think the study falls far short. The

1 Missouri River study is not a closed system where  
2 you can pull water out of Garrison and not impact  
3 everybody else. Any diversion within the system  
4 affects everybody else down the system. And the  
5 Bureau of Reclamation has no control over how the  
6 Corps operates the system. That's seen by Wakpala  
7 where we've been projected to be out of water four  
8 years in a row, again this coming year.

9 Any adjustments to one lake is moved to  
10 another lake. Oahe is the adjusting lake. So if  
11 you take water out of Garrison, it's probably going  
12 to be adjusted by Oahe because the lower lakes are  
13 pretty much kept full.

14 And we've got people living in fear that  
15 they're going to be out of water. We have people  
16 hoarding water, we have people spreading rumors  
17 that the system's going to fail. We have to come  
18 up with plans to provide alternate sources of  
19 water, but we can't make people feel good, we can't  
20 make people go to bed without worrying about not  
21 having water in the morning, and it is difficult.

22 Even a person that lives off a well  
23 system, you wake up, you have no water, that's hard  
24 on you. You can't wash up, can't flush your  
25 toilets, have no water for cooking. Basically by

1 losing water you're kind of putting everybody back  
2 in the Middle Ages. You have to go elsewhere, get  
3 rid of your waste, bring water in.

4           We were promised by the Corps of Engineers  
5 back in the Fifties when they were trying to sell  
6 the projects and get people to sign. They came by  
7 and said they'd provide good water, they'd provide  
8 electricity and they'd provide a whole bunch of  
9 other things, and we're still waiting.

10           The amount of money we get from the Dakota  
11 Water Resource Act is a little over a million  
12 dollars a year. We can't even build a Corps  
13 pipeline to get it out of the Valley. We need ten  
14 million dollars. We'd have to wait ten years to  
15 get that.

16           So we're pretty much at a standstill  
17 unless that funding comes forward, unless we get  
18 our intakes taken care of. It looks like there is  
19 no water out there, although the statement is made  
20 that it's a reliable source of water, but for us it  
21 isn't. We're still on the river system. We may  
22 not be part of the Garrison Dam, but we're still  
23 affected by the operation.

24           So I think the Red River Valley Project  
25 should not be built, and I don't think the Tribe is

1 supporting it unless we get our needs taken care  
2 of, we can at least let our people go to sleep and  
3 expect to have water in the morning and not have to  
4 worry about it.

5 So thank you for allowing me to comment.

6 MR. FEIST: Thank you. Our next speaker  
7 is Mr. Michael Catches Enemy.

8 MR. CATCHES ENEMY: Good evening. Again,  
9 my name is Michael Catches Enemy. I'm an enrolled  
10 member of the Oglala Sioux Tribe, also a member of  
11 the Wakpamni District on the Pine Ridge Indian  
12 Reservation located on the southwest edge of South  
13 Dakota.

14 I was asked to come up here by the tribal  
15 president, John Yellow Bird Steel, but the comment  
16 that I'm going to be making is on behalf of the  
17 Natural Resource Regulatory Agency, which I am the  
18 natural resource director.

19 Some of the comments -- first of all, this  
20 water diversion project should not continue without  
21 the Oglala Sioux Tribe and other member tribes of  
22 the great Sioux nation officially asserting their  
23 full claim, not quantifying their water rights  
24 through the Missouri River.

25 The Missouri River already is, in our

1 opinion, over-allocated without considering the  
2 Tribe's senior rights to the Missouri River. The  
3 1851 and 1868 treaties established the boundaries,  
4 which include the Missouri River for the great  
5 Sioux nation. This has not been diminished, these  
6 boundaries.

7 We assert indeed that the Oglala Sioux  
8 Tribe is a river tribe. I know a lot of these  
9 federal agencies, including Bureau of Reclamation,  
10 Army Corps of Engineers, they continue to state the  
11 Oglala Sioux Tribe is a Missouri River Basin tribe.  
12 Also put the terminology out there that we're a  
13 non-river tribe. In fact, we are a river tribe.

14 We do have -- we're part of the  
15 Minnewichoni Act where we do have a water intake  
16 near Pierre, South Dakota, and the construction is  
17 still underway to connect that Missouri River water  
18 to our existing system on the Pine Ridge  
19 Reservation, and that, itself, tells, you know,  
20 that the Oglala Sioux Tribe is directly tied to the  
21 Missouri River.

22 To go along with that, sitting here  
23 listening to some of the other member tribes speak,  
24 I know that these public comment periods -- you  
25 know, I see that they're pretty quick in nature,

1 you know, just the few days here and the locations  
2 are located primarily up here in North Dakota. I  
3 really feel that these public meetings should have  
4 been held with some of the other reservations --  
5 all the reservations within that Missouri River  
6 Basin.

7 We're -- as a natural resource regulatory  
8 agency, we're greatly concerned with the  
9 construction of this project because we feel that  
10 it would adversely impact the availability of water  
11 flows downstream on the Missouri River, which will  
12 result in environmental impacts on the river  
13 itself.

14 We can appreciate the fact that our  
15 brothers and sisters, namely the Standing Rock  
16 Sioux Tribe, are in dire need to obtain funding to  
17 repair their existing intakes since their  
18 reservation relies a lot on this Missouri River.  
19 It just seems that we could be facing this as a  
20 downstream tribe, Oglala Sioux Tribe, with these  
21 same issues that the Standing Rock Sioux Tribe are  
22 currently facing and have been facing since the  
23 past few years now, and to hear their stories of  
24 how they deal with the water shortages is very  
25 scary, you know, to think about it for our tribe,

1 as well.

2           So there's a lot of unfairness when you  
3 think about projects like this being prepared.  
4 They're supposed to be prepared for their water  
5 shortages up in the north, Upper Missouri River  
6 Basin, and it just seems a little unfair that  
7 Standing Rock's already gone through this right now  
8 and they're having a hard time getting funding to  
9 get their intakes repaired and up to the standards  
10 that they require.

11           I feel that as an agency of the Department  
12 of the Interior, the Bureau of Reclamation still  
13 holds a trust responsibility to protect the trust  
14 assets of the tribes. These Indian trust assets  
15 include the water rights held by the tribes and  
16 should be strongly considered. It seems right now  
17 in the supplemental EIS it's not being considered  
18 as it should be.

19           There's been no major revisions to the  
20 Indian trust assets portion in this EIS, and it  
21 appears that this preferred alternative to the  
22 Sheyenne River -- or the Sheyenne River alternative  
23 is the preferred alternative, and the natural  
24 resource regulatory agency supports the no-action  
25 alternative.

1            Tribes such as Oglala Sioux Tribe should  
2            have formal consultation prior to any further  
3            actions to be taken. A public meeting like this  
4            should be held right on the Pine Ridge Reservation  
5            and should be considered as a government-to-  
6            government consultation.

7            One more item is the positive public news  
8            releases that continue only to focus on the support  
9            of the project. I don't see enough of the news  
10           releases that include the opposition to the  
11           project, and I think that gives a false sense that  
12           this project's going to get rolling and there's  
13           more support than there is opposition.

14           And I think we will -- I will limit my  
15           comments to that. We'll be providing a written,  
16           formal comment by the March 26th deadline, and I'm  
17           sure our tribal chairman, Mr. John Yellow Bird  
18           Steel, will also be providing some comments to  
19           this, as well.

20           Thank you.

21           MR. FEIST: Okay. Thank you very much.  
22           At this point that's all the speaker cards I have.  
23           Is there anyone else that wanted to deliver verbal  
24           comments tonight? No? Well, seeing as there's no  
25           one else who wishes to make statements, we'll

1 conclude this hearing.

2 On behalf of the United States Department  
3 of the Interior, Bureau of Reclamation, and the  
4 State of North Dakota, I'd like to thank you for  
5 attending and providing your comments. Thanks.

6 (Concluded at 8:28 p.m., the same day.)

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1 CERTIFICATE OF COURT REPORTER

2

3 I, Stephanie A. Smith, a Registered  
4 Professional Reporter,

5 DO HEREBY CERTIFY that I recorded in  
6 shorthand the foregoing proceedings had and made of  
7 record at the time and place hereinbefore  
8 indicated.

9 I DO HEREBY FURTHER CERTIFY that the  
10 foregoing typewritten pages contain an accurate  
11 transcript of my shorthand notes then and there  
12 taken.

13 Dated at Bismarck, North Dakota, this 7th  
14 day of March, 2007.

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Stephanie A. Smith  
Registered Professional Reporter

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