

RED LAKE BAND
of CHIPPEWA INDIANS
RED LAKE NATION HEADQUARTERS



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March 23, 2007

Attn: Red River Valley Water Supply Project SDEIS
 Bureau of Reclamation
 P.O. Box 1017
 Bismark, ND 58502-1017

RE: Red Lake Nation's Comments on the RRVWSP SDEIS

Dear Signe Snortland,

On behalf of the Red Lake Band of Chippewa Indians ("Red Lake Nation", the "Band", the "Tribe"), a federally recognized tribal government, which stands to be adversely impacted by elements of the Red River Valley Water Supply Project, I hereby submit the following comments to the Supplemental Draft Environmental Impact Statement for the Red River Valley Water Supply Project ("SDEIS"). The Tribe's concerns involve a number of areas, but are primarily related to: (1) bias during the course of the project; (2) failure of the Bureau of Reclamation ("Bureau") to conduct appropriate government-to-government consultation with the Tribe; (3) conflict of interest inherent in the development of not only the DEIS, but also in development of the supporting documents and reports that form the basis of the DEIS and SDEIS; (4) inadequacy of the proposed options and alternatives; (5) inadequacy of the environmental assessment; and (6) lack of any cultural and/or spiritual assessment of such alternatives. The Tribe believes that the latter is a result of not only inherent bias, but also the Bureau's failure to fulfill its duties as a federal agency to protect tribal trust resources in accordance with federal directives.

A. Bias Throughout the Course of the Project

We have continually stated our believe that this process has been designed and conducted in such a manner that enables the State of North Dakota ("State") to pursue its desire to usurp other water users' rights in order to justify taking water for its own use. The Bureau has clearly shown itself to be complicit in this attempt through the DEIS and this SDEIS to justify the granting of water rights from the Missouri River Basin to yet-unborn residents and yet-to-be created future companies in the Red River Basin at the expense of current Missouri Basin residents whose water rights should be, and lawfully are, senior to the State's rights.

The State has realized that in order to continue its unfettered development of the eastern portion of the State, it *must* choose between its desire to supply all of its

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Municipal, Residential, and Industrial (MRI) needs with its intent to irrigate extensive arid lands *without any constraints*. Otherwise, the State will be forced to get water from somewhere either outside of the State's borders within the basin, or from outside of the Red River Basin. The DEIS and the SDEIS both indicate that there are sufficient water supplies available from within the confines of the Red River Basin to meet the area's actual future needs, even in the event of a moderate drought. (SDEIS p. 2-2) This would require the State to pursue a phased approach, including the development of a number of local options and sources, as well as the implementation of a sufficient degree of true water conservation and drought contingency measures.

Instead, the State, represented by the Garrison Diversion Conservancy District ("GDCCD") has chosen to abandon the cheaper, less environmentally damaging in-basin alternative in favor of an excessively priced out-of-basin alternative. This alternative not only risks severe and irreversible environmental damages to the State and its neighbors, but also requires excessive up-front, construction, and ongoing maintenance costs for both the Project itself as well as the Biota Treatment Plant that would be required, of which the efficacy is unknown and/or unproven. Furthermore, the burden of paying for this alternative will ultimately be carried by federal taxpayers, not the State. Should their gamble to secure Missouri water rights for Red River Basin residents and industries succeed, the State will be able to continue to grow and develop unfettered well into the future without any true consideration or implementation of water conservation practices. When the State finally exceeds the capacities available from the Missouri River, they will continue to benefit from in-basin resources, resources that they should be required to develop before seeking out-of-basin resources. The State does not truly need out-of-basin resources, they merely desire to use such resources in order to avoid exhausting their own in-basin resources. Furthermore, GDCCD clearly has a vested interest in pursuing the import of Missouri River water for eastern North Dakota, as mandated under its charter.

B. Failure to Conduct the Required Government-to-Government Consultation with the Tribe

The Red Lake Nation is greatly concerned over the Bureau's continued failure to conduct appropriate government-to-government consultation with, and/or to give adequate consideration to the comments of, the Tribe, as dictated by Executive Orders Number 12898 and Number 13175. The Bureau, acting in its role under the Secretary of Interior, is bound by tribal consultation requirements under both Executive Orders. As a result, the Bureau has failed to appropriately consider the impacts of the project and its various alternatives on federal government-protected tribal trust resources, including general water usage and other water rights; hunting, fishing and gathering rights; and cultural resources and religious rights. Furthermore, despite our comments on the DEIS, the SDEIS continues to omit Executive Order Number 12898 and Executive Order Number 13175 from the listing of "...Applicable Laws, Regulations and Policies," which appear on pages 5-10 through 5-16 in the SDEIS.

In addition, the Bureau failed to address the impact of the proposed alternatives on the Nation's subsistence hunting, fishing, and gathering rights; health impacts on our members; and environmental justice considerations. In fact, the Bureau does not even discuss the impacts from the inadvertent transmission of fish pathogens into the Red Lakes Fishery in the event of any unanticipated failure in the proposed water treatment system that the preferred alternative would require. The Bureau does not even discuss the details of such proposed water treatment system. Rather than address our comments, the Bureau simply chose to drop the Lake of the Woods Import Alternative, acting as if that was the only alternative that would pose a risk to the Red Lake Nation.

However, the fact remains that the Preferred Alternative would still require the transfer of Missouri River Water, including biota and fish pathogens not currently present in the Red River Basin ecosystem, into the Red River Basin. And, while the Preferred Alternative would include a Biota Treatment Plant, the SDEIS fails to provide specific details for such a plant, nor does it even cite to any examples of a system built to the necessary scale and capacity that exists today, presumably because there are none. Moreover, due to its nature and the risks involved, the treatment plant as proposed would need to be totally infallible, another example which cannot be supported by the State. In order to truly satisfy the requirements of the statutory requirements under NEPA and the above-referenced Executive Orders, the Bureau must complete a full assessment of the potential impacts on the Red Lake Fishery as a result of the release of biota or fish pathogens before it can pursue an out-of-basin alternative. Such assessment should include both the physical and monetary impacts of a potential collapse of the fishery along with proper consideration of the resulting spiritual impacts upon the people of the Red Lake Nation.

C. Conflict of Interest

The Red Lake Nation has repeatedly expressed concern over a significant conflict of interest in the process and purpose of this proposed project, particularly with regard to who prepared both the earlier DEIS and now the SDEIS. Neither the DEIS nor the SDEIS were prepared by Bureau and the State, as directed by the Dakota Water Resources Act of 2000 (DWRA) (P.L. 106-554). Instead, the Bureau and GDCD prepared both the DEIS and SDEIS. While the GDCD was appointed by the State to represent the State in the EIS process, GDCD has no statutory authority to represent the State in this specific matter. As such, GDCD's role in the preparation of the SDEIS presents a conflict of interest.

Furthermore, the powers and duties of the GDCD are specifically set forth under North Dakota Century Code ("NDCC") § 61-24-08, and are expressly limited to promoting the construction, operation, and maintenance of the Garrison Diversion Unit (NDCC § 61-24-08 [3,4,5]); entering into contracts to supply water from the United States to irrigation districts, persons, or public or private corporations (NDCC § 61-24-01 [10]); and to be appointed as the fiscal agent for the United States in connection with the Garrison Diversion Unit (NDCC § 61-24-08 [12]). The GDCD is not "the State of North

Dakota” (NDCC § 61-24-08-3), nor is it an arm or a political entity of the State. Furthermore, there are no existing statutory provisions permitting the GDCD to represent the interests of the State of North Dakota in matters involving the Garrison Diversion Unit. Therefore, GDCD involvement in preparation of this DEIS is improper. This is particularly true, given that the very mission of the GDCD from its inception has been to accommodate the *inter-basin* transfer of waters from the Missouri basin into the Red River Basin through the completion of the Garrison Works (“Works”), as specifically authorized by Section 61-24-01.5 of the NDCC. Notably, progress on the Works was stalled in 1977 by the International Joint Commission, who recommended that those portions of the Works affecting Canada not be built until or unless international concerns over the transfer of biota are resolved.

Rather than provide any rebuttal to the comments that the Nation, as well as others, made to the DEIS regarding GDCD and the inherent conflict of interest, the Bureau chose to ignore such comments and remain silent on the issue. Perhaps the Bureau believes that its earlier patent dismissal of such concerns, originally raised in our September 2005 comments on the *Draft Report on Red River Valley Water Needs and Options*, would be sufficient. However, their statement [that] “The Governor of North Dakota has the authority to designate the Garrison Diversion Conservancy District to represent the State in this study” was given without any justification or statutory basis, and both the issue and our allegations remain unanswered. Furthermore, there is no mention in the SDEIS that such concerns were ever raised throughout the process, nor is there any indication that the Bureau seriously considered or investigated the allegations. Furthermore, the Bureau has not provided any evidence of statutory authority under which it might hope to purport that the GDCD could legally represent the State in this matter, or support its argument that it has complied with the conflict of interest provisions under NEPA.

D. Technical Issues with the Methodologies, Assumptions, and Alternatives Selected

The DEIS violates NEPA because it is entirely based upon the flawed methodologies and assumptions presented in the *Current and Future Population of the Red River Valley Region 2000 through 2050* (Population Study), *Red River Valley Water Needs Assessment Final Appraisal Report* (Water Needs Report), and the *Final Report on Red River Valley Water Needs and Options* (N&O Report). We incorporate into these comments by reference our former comments on the *Draft Report on Red River Valley Water Needs and Options* dated September 26, 2005 and submitted by Floyd Jourdain Jr., Chairman of the Red Lake Tribal Council, *which have yet to be answered*. I also include by reference Red Lake Tribal Council Resolutions 46-06 and 47-06, both of which include my statement at the Public Comment Hearing of March 6, 2006 at Red Lake, all of which speak directly to the nature of the Red Lake Nation’s opposition to the RRVWSP and concerns about the DEIS and now this SDEIS.

Furthermore, as discussed below the Nation believes that the SDEIS violates NEPA because it inadequately analyzes the alternatives.

1. Inadequacy of the Population Study

The population projections from the Needs & Options Report that constitute the very foundation of the SDEIS are grossly inflated. Although the Bureau reverts to the Scenario 1 population growth model in the SDEIS, the model is unrealistic. The growth model used by the Bureau's population study estimates 4% growth over a 50 year period, while actual census figures for a shorter, six-year period are closer to 1.6% growth. The Census Bureau's most current population numbers for North Dakota as a whole has declined from 642,200 in 2000 to 635,857 in 2006. For the DEIS/SDEIS study area, only a small *portion* of the area actually grew, albeit at a rate of only 1.6 percent rather than the 4 percent figure projected by Bureau. In fact, as recently as October 15, 2006, *The Forum* (Fargo, ND) reported that:

"Something is creeping up on Fargo-Moorhead, threatening to send the thriving metro area into a stagnant state.

It's called death. And by the year 2020, it will be more common than birth in the metro area..."

"... in-migration will occur, but it won't overcome the loss of natural population increase. The Metro COG study shows population gains steadily falling in the metro area... between 2030 and 2035." (Nowatzki, 2006)

Despite evidence to the contrary, the Bureau has decided to use unreliable and inaccurate projection growth models only to support the State's desire to have out-of-basin alternatives.

2. Inadequacy of the Water Needs Report

The Water Needs Report upon which the DEIS and this SDEIS are based involves several components, Per Capita Water Use, Water Conservation, and Industrial Water Needs. The report is based directly upon the inflated population projections cited in the Population Report (above). In addition, the Bureau continually fails to envision or explore the impacts of any substantive technological or policy considerations that could be employed to increase the efficiency of water use amidst dwindling supplies, nor to appropriately consider the implementation of drought conservation measures. Similar to the DEIS, the alternatives considered under the SDEIS are predicated upon a purported future need during an extreme drought, modeled after the 1930's drought, which has been characterized by the Bureau's own contractor as:

“...[typifying] the most extreme event anticipated until at least 2050.”
(Meridian Environmental Technology, Inc., 2004, p. 47; SDEIS, p. 2-3)

Yet, when considering the possibility of implementing water conservation and drought contingency measures, the SDEIS states that:

“Drought contingency measures, as discussed in Appendix A.1, would be implemented during droughts **greater than the 1930’s.**” (Emphasis added)
(SDEIS, p. 1-8)

However, the SDEIS Appendix A.1 indicates, per the City of Fargo Drought Management Plan (which was developed in 2003), that water demand reductions of up to 35 percent could be effected through the implementation of appropriate and tiered drought contingency measures in the event of a significant and ongoing drought situation. (SDEIS Appendix A.1, p.3)

Accordingly, there are no provisions in any of the alternatives for the true consideration or implementation of water conservation measures such as re-use or fee structures to discourage the wasting of water, or by any other means. Furthermore, despite the Nation's comments in regard to this on the DEIS, the Bureau continues to claim that the best savings achievable for any of its proposed alternatives would be in the realm of 7 percent. Furthermore, the Bureau fails to indicate that when it submitted its draft Water Conservation Potential Assessment Report and the 7% savings to an independent consultant for review, the consultant “...put the total savings, or conservation potential, in the range of 15 percent or more, a large portion of which would be due to the plumbing code”(Maddaus, 2004). Nonetheless, the DEIS continued to use water conservation savings of 7%, half the suggested amount, and fails to mention either the report or its independent consultant, or even to list a reference to them in the Literature Cited. The SDEIS continues to discount water conservation measures.

While the Bureau contends that “[t]he proposed alternatives were optimized and sized to only meet the minimal demands of the service area” (Appendix B, Page 11, pp 10), the very fact that each of these alternatives would meet those “minimal needs” without employing *any* conservation measures inherently attests to the fact that the “needs” are actually inflated. In a time when water conservation and drought contingency measures have been adopted by communities facing real water shortages across this nation, North Dakota proposes to meet its purported needs, rather than its actual needs. In reality, the State's purported needs are nothing more than a laundry list of its most wildest and most wanton desire to take waters from outside sources. Such greediness will ultimately impact both the residents of the Missouri and the Red River Basins.

3. Bias in the development of the Options and the Alternatives

Every aspect of the SDEIS that has an influence on the selection and the comparison of the proposed alternatives was systematically and fundamentally biased to

inflate the State's apparent need. As a result, those alternatives involving the delivery of Missouri River water to the Red River Valley utilizing the existing Garrison Works appear to be more feasible. For example:

- The SDEIS is based on an unrealistically long 50-year planning horizon which was utilized to inflate future water needs, despite wide recognition of the unreliability of population and water use projections that far into the future.
- The SDEIS is based on the single point Scenario One 2050 population and water use projections, rather than on a series of projections at shorter intervals that would show the diminishing reliability of those projections and allow the public, decision makers and water facility managers to make informed evaluations about truly realistic needs.
- Population estimates by independent entities with demographic expertise were rejected for the DEIS/SDEIS Scenario One population projection, in favor of estimates based entirely on unfounded assumptions and conjecture. Furthermore, the Bureau totally ignores reputable reports that emerged between the publishing of the DEIS and the SDEIS that clearly indicate that the Bureau's projections are unfounded.
- Because future industrial water needs cannot be reliably estimated more than 10 years in the future, the SDEIS, like the DEIS before it, is not based on an objective, scientific analysis of those needs, but rather on hypothetical scenarios and raw speculation.
- Significant MR&I water shortages can not be expected to occur in the Red River Valley by 2050 under any otherwise-normal drought scenarios even with the inflated and speculative demands generated for the DEIS, so the development of options and alternatives was based on the assumption that another 1930s-type extreme drought will occur by 2050.
- The potential contributions of water conservation measures in reducing future shortages were minimized or summarily dismissed in the SDEIS. (See prior comments on the Water Needs Study and the DEIS.) Although all of the options identified in the DEIS for meeting future Red River Valley MR&I water needs are based on the presumption that a 1930s type drought will occur by 2050, nowhere in the SDEIS is there any consideration of how the implementation of drought contingency measures (especially those cited in the SDEIS Appendix A.1) could reduce shortages during, or leading into, droughts.
- Although the drought frequency report upon which the SDEIS is based concludes that a drought of the magnitude of the 1930s drought is a realistic and statistically significant representation of the most extreme drought anticipated until 2050 (p. 15), and although the SDEIS states that it utilized a period including the 1930s drought for modeling purposes, it dismissed

consideration of drought contingency measures by claiming that they “must be reserved for unforeseen events.”

- Instead of recognizing the fact that a drought in the Red River Valley would in most likelihood be widespread across the valley, or that such a drought might also occur simultaneously in the Missouri basin, the alternatives in the SDEIS were selected, and are compared, based upon the assumption that any such drought will occur *only* within the North Dakota portion of the valley. The contention that such a drought would be contained within any political boundary or in just one basin, is simply ludicrous, and must be rejected on its face.
- None of the alternatives identified in the DEIS for meeting future Red River Valley water needs is designed to be implemented in increments as water needs do - or do not - materialize. All of the alternatives developed for the report would require a massive amount of infrastructure development to be built in advance, at an enormous expense to taxpayers, despite the unlikelihood of such an event actually occurring, or that if it did it would most likely build in a cumulative fashion.
- Many truly feasible in-basin alternatives that could help meet the needs of the basin as a drought scenario develops were summarily thrown out of consideration – only some of which appeared in Table 13 of the DEIS (DEIS, p.34), due to that fact that they would not meet the entire (overly-inflated) “need”. However, a number of these alternatives could be combined, and implemented on an incremental basis to meet any real need that would arise, and therefore should be considered in this DEIS. Additional in-basin alternatives such as development of the Spiritwood and the Sheyenne Delta Aquifers were summarily rejected by the Bureau, should also be seriously considered. Furthermore, the analysis should include potential savings attainable through water conservation measures, a factor that would make these alternatives more advantageous economically.
- None of the Alternatives takes into consideration the future needs of users outside the State of North Dakota (other than in the cities of Moorhead and East Grand Forks) who currently rely upon the waters that North Dakota seeks to access, whether in the Red River Basin or the Missouri Basin. The SDEIS, by improperly limiting the scope of analysis for the project, simply does not anticipate, nor does it provide any realistic analysis of, the needs of the dependent population (apart from North Dakota residents) or the decreased availability of water that may exist under a drought scenario. Despite projecting huge increases in population and water need in the North Dakota portion of the basin, the DEIS makes no allowance for population growth or increased demand in the Minnesota portion of the basin (from which the in-basin alternatives would draw their supply) or from the Iowa, Kansas, Missouri or Nebraska portions of the Missouri basin (from which the out-of-basin alternatives would draw their supply). Furthermore, despite evidence

that depletions on the Missouri River increased (by 3.8 Million acre-feet per year) between 1987 and 2002, the SDEIS inexplicably claims that in 2002 there was more water available in the Missouri instead of less!

- Alternatives were developed and incorporated without proper consultation of tribes whose water rights stand to be abrogated. The Red Lake Nation, as well as other tribes and First Nations in Canada, all have hunting, fishing and gathering rights, as well as other usage rights on the Rivers that would be utilized for supply purposes for either the in-basin or out-of-basin alternatives. These rights have existed since before the creation of the States of Minnesota and North Dakota. Even minor withdrawals under drought scenario could stand to impact fisheries spawning habitats and wild rice production along with documented Endangered Species. Regardless, tribes were not properly invited to participate in the process from inception of the study, and there was no substantial attempt to include, consult with, or address tribal concerns in the development of the SDEIS, *despite the fact that the Bureau of Reclamation is bound by its Federal Trust Responsibility to consult with tribes and to protect tribal resources*. We previously documented this situation in our comments to the DEIS, yet the situation remains unchanged.
- The DWRA at § 8(d)(1) and § 8(d)(2) instructs the Secretary to select an alternative. Such alternative is subject to NEPA and therefore a proper and un-biased NEPA process. In the DEIS, the Bureau notes that it "[H]as not identified a preferred alternative in this DEIS. A federal preferred alternative will be identified in the Final EIS" (p.32). In the very next paragraph, however, the Bureau notes the State's preferred alternative in a blatant attempt to bias the reader. Accordingly, despite Reclamation's previous written and verbal assurances to commenters that no preferred alternative would be selected until the final EIS came out, it is not surprising that the Bureau once again violated its word and announced in the SDEIS the GDU Import to Sheyenne River Alternative as the Preferred Alternative. The GDCD, and other vested interests who participated in the development of the DEIS and the SDEIS, structured both the DEIS and the SDEIS with a clear bias towards their preferred alternative.
- Anyone who might choose to carefully review the nature, history and details of the Garrison Diversion Project will note that, despite the GDCD's and Reclamation's claims that the RRVWSP is not the Garrison Diversion Project, the Garrison Diversion Unit Import to Sheyenne River Alternative is in its essence the very same plan that was originally proposed under the Garrison Diversion Project in the mid 1960's. In fact, this plan is by its nature an integral part of the original plan for a Missouri River diversion that was proposed in 1927 by Elwyn Chandler. This alternative, which involves pumping water via the McClusky Canal, sparked the International Joint Commission (IJC) referral which led to the IJC's adverse August 1977 recommendation mentioned above, which brought the Garrison Diversion

Project to a standstill. The difference in this case is that instead of being proposed to supply irrigation, the RRVWSP is proposed to supply MR&I needs in case of a purported drought.

- The alternatives analysis in the SDEIS, like the DEIS before it, is seriously deficient in that it does not compare the impacts to the Missouri basin on an equitable basis with alternatives in the Red River basin. For instance, despite current and ongoing rivalries over Missouri River water that affect current users, including, among others, Indian tribes to the north, municipal water suppliers to the south, and navigation interests, and despite the fact that a number of other proposed and potentially foreseeable projects also anticipate drawing water from the Missouri, the Bureau fails to adequately consider the cumulative effects of these depletions. This is especially true in regards to the RRVWSP's proposed withdrawals and the potential lack of availability of sufficient water in Lake Sakakawea to supply the necessary Snake Creek Pumping Plant due to the ongoing drought in the Missouri basin.
- The alternatives analysis for the Missouri basin does not include adequate consideration of the environmental factors of reduced flow on such things as pollution abatement and the impact on drinking water systems on the lower Missouri River, the cooling needs of power generating facilities, hydropower facilities, and navigation.
- The alternatives analysis of the Missouri basin fails to address critical habitat needs for species such as the piping plover and interior least tern, despite the current Biological Opinion on the Missouri River. See *Revised Draft Fish and Wildlife Coordination Act Report for the Red River Valley Water Supply Project*, (FWS, November 2005) The SDEIS actually attempts to minimize and summarily discount the projected *42 percent decrease* in riverine habitat of the endangered interior least tern and *critical* (riverine) habitat for the piping plover under the Preferred Alternative, stating that:

"...results suggest that this alternative may have an adverse impact on habitat for interior least tern and designated critical habitat for piping plover." (Emphasis added) (SDEIS, p. 4-178)

- The Biota Risk Assessment utilized in the SDEIS continues to rely on the unprecedented approach of reducing what should be a species-specific analysis of the risk of biota transfer, including fish pathogens, to that of a simple and extremely generic numerical model. In the process it essentially justifies whatever risks may be present, at whatever costs might be incurred both environmentally and fiscally, to be foregone conclusions and therefore inconsequential. This approach is patently unacceptable, as well as scientifically, environmentally, socially and morally unjustifiable, and must be rejected. As we suggested in our comments to the DEIS, this must be replaced with a true species-specific, in-depth analysis of the actual costs relative to the

transfer of biota due to the proposed inter-basin transfer. Those costs must include the various costs of filtration and treatment along with the maintenance of such systems, specific details associated with various species and pathogens of concern, and some system of redundancy to ensure that the failure of any such system will not result in a system-wide release of exotic species or pathogens. However, in this SDEIS, Reclamation provides no such in-depth analysis, and speaks only in generic terms about a range of possible treatment options. Furthermore, Reclamation fails to provide any specifics on redundancies or alternate delivery scenarios to prevent a failure of the system from instantly transmitting invasive species from the Missouri into the Red River basin. Likewise, it provides no examples of any such system currently in place, built to a similar scale, or proven to be infallible. We note, however, that this is understandable since there is no such facility available today that could even serve as a marginally-comparable example.

- The SDEIS resorts to the application of peak-day water demand, even in the midst of an extreme drought, for every day of the month in calculating the purported water need of the area. This creates an unrealistic and indefensible inflation of the true need, which is then used to justify the selected Preferred Alternative. Furthermore, the justification for this approach does not take into account that during the 1930's drought Lake Ashtabula, which could otherwise be used to supplement supply, was not yet built. Reclamation simply ignores the viability and the potential contribution of this reservoir.
- Potential in-basin sources of water, such as the Sheyenne Delta and Spiritwood Aquifers, were arbitrarily deleted from consideration in the Needs and Options Study as they were only considered in isolation, when in fact, they could be utilized in conjunction with other resources to provide a much cheaper and less risky in-basin alternative that could be phased in over time as a drought develops.

The SDEIS's Preferred Alternative relies on pumping water from Lake Sakakawea via the Snake Creek Pumping Plant. Since the Missouri River is experiencing an ongoing drought situation, current reservoir levels would be insufficient to maintain any long-term ability to pump via the plant. This brings into serious question the purported viability of this alternative.

E. Issues Specific to Tribal Resources

1. Cultural and Spiritual Issues

Despite our former comments, the Bureau continually fails to meet requirements under NEPA, the Executive Orders, and the federal statutes governing Indian religious freedom and sacred and historical sites, by excluding a meaningful analysis of the impacts of the proposed project on Red Lake resources and members. The Bureau continues to trespass on Native American spiritual beliefs and culture as well as to unduly

imperil tribal rights and resources. The DEIS and SDEIS constitute nothing less than an overt attempt to abrogate treaty rights, which the Federal government is bound to uphold for the benefit of the Red Lake Nation, its resources, and its people, as well as that of other tribes.

Red Lake Chairman Floyd Jourdain Jr.'s statements at the Public Comment hearing held by Reclamation on March 6th 2006 at Red Lake should make it abundantly clear to the Bureau that water is the very life blood of the Annishinabe people. Although the Bureau refused to record his comments, *even despite his request that they do so at the time*, those representatives in the room from the Bureau and GDCD cannot truthfully dispute that this message was clear. As a people, the Annishinabe are spiritually bound as protectors of the waters that sustain themselves and all of their relatives, both human and non-human.

2. Fishing, Hunting and Gathering Rights

The Red Lake people have sustained themselves throughout history on the abundance of nature's harvests that these waters nourish, and fish, game and wild rice are staples of their diet. Despite the Bureau's acknowledgement of their responsibilities under federal law (SDEIS, p. 3-102) and assertions of consultation (SDEIS, p. 3-103), the Bureau continually fails to appropriately consider the ultimate implications of its out-of-basin alternative. The fact remains that while the Red Lake Nation's lands may be outside the stated scope of the project, the Nation's resources are well within the potential impact zone and the direst of consequences stemming from an out-of-basin alternative. However, despite the Bureau's indication that ITAs include "...trust lands; hunting, fishing, and gathering rights; and water rights," (SDEIS, p.3-103) the Bureau goes on in the next paragraph to imply that since there are no Nation lands within the improperly defined scope of the project that there could be no impact to the Nation's ITAs. In doing so, the Bureau summarily discounts the fact that the Nation's resources, including those that provide the very sustenance and economic viability of the Nation's economy, would be severely at risk since both biotic and pathogenic pathways would connect to the Nation's resources by way of existing water connections.

Again, as shown in this SDEIS, the Bureau apparently believes that if it chooses not to consult the tribe, or to ignore the comments that the tribe makes, then it can escape appropriate consideration and observance of its obligations under the law and under NEPA specifically. Under NEPA, however, such ignorance is not evidence of a lack of impact.

3. Social and Economic Impacts

Despite the comments that we made on the DEIS regarding the lack of an economic analysis for the Red Lake fishery nor any analysis of the potential health impacts, cultural impacts, or spiritual impacts to the Red Lake people, the SDEIS makes no attempt to note or address these concerns. In fact, as stated previously above,

Reclamation attempts to both ignore and summarily discount our concerns. This is unacceptable, especially in light of the fact that fishing is a mainstay of our tribal members' subsistence diet, and that both the fish and the water have a deep spiritual connection and cultural value to members of the Red Lake Nation.

E. Conclusions

Ultimately, an objective review of the evidence clearly indicates that the SDEIS, like the DEIS before it, was not properly prepared by the Secretary, as was specified in the DWRA. Furthermore, an in-depth analysis of the DWRA, the RRVWSP, the history of the Garrison Diversion Project and all of its various reformulations (including the DWRA), and most importantly the facts surrounding the development of the SDEIS itself clearly indicate that there has been undue influence in both the SDEIS, and in the studies that the DEIS and SDEIS are based upon, exerted by the State and the GDCD as well as by their contractors. This situation has introduced significant bias by interests (vested with the transfer of Missouri basin water into the Red River basin) into the SDEIS as well as the process that led to its development. Such conflicts of interest are clearly in direct violation of the intent of NEPA, and are specifically in violation of Congress' intent as evidenced by the very language of the DWRA.

For these and many other reasons which we simply and unfortunately do not have sufficient time to address at this point in time, Reclamation should declare this SDEIS to be invalid. The process to develop a meaningful EIS, true to the provisions and intent of NEPA, with truly feasible alternatives and meaningful analysis of the same, based upon reasonable projections and realistic needs should be re-started from the very beginning. Furthermore, that EIS should encompass a comprehensive range of alternatives including a number of in-basin alternatives that could incrementally be pursued to meet increasing demands over time as, and if, a drought develops. Moreover, in doing so, Tribes like the Red Lake Band of Chippewa Indians and other stakeholders must this time have a meaningful place and say on the Technical Steering Team as well as the Project Review Team.

Respectfully Submitted,

RED LAKE BAND OF CHIPPEWA INDIANS



Chuck Meyer
Wetland Specialist