



**THREE AFFILIATED TRIBES
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From the Office Of:

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**PUBLIC COMMENT HEARING REGARDING
THE SUPPLEMENTAL DRAFT
ENVIRONMENTAL IMPACT STATEMENT
DEVELOPED FOR THE PROPOSED
RED RIVER VALLEY WATER SUPPLY PROJECT
Prepared Testimony By
Chairman Marcus D. Wells, Jr. "Ee-Ba-Da-Gish"
Three Affiliated Tribes * Fort Berthold Reservation
Thursday, March 15, 2007
Four Bears Casino (Conference Rooms)**

My name is Marcus Wells, Jr., and I am the Chairman of the Three Affiliated Tribes. Thank you for this opportunity to comment on the Supplemental Draft Environmental Impact Statement (DEIS) developed for the proposed Red River Valley Water Supply Project.

The Bureau of Reclamation and the Garrison Diversion Conservancy District have both identified the "Sheyenne River Alternative" as the preferred alternative. This alternative requires a diversion of water from the Missouri River. The Three Affiliated Tribes cannot support this alternative or any alternative that would require a diversion of Missouri River water unless and until the concerns of the Three Affiliated Tribes are met.

I want everyone to understand that the Tribes are not absolutely opposed to the preferred alternative. The Three Affiliated Tribes understands that potential need for the project. However, the project cannot proceed at the potential expense of the Tribe.

The Tribe must have assurances that its concerns will be adequately addressed before it can lend its support to the Red River Valley Supply Project that involves a diversion of water from the Missouri River.

Preliminary Comments on the Lack of Consultation

I would like to begin my comments today by reminding the Bureau of Reclamation and the Garrison Diversion Conservancy District, the two lead agencies in preparing the Draft Environment Impact Statement, that federal agencies are required to consult with our Tribe in accordance with Executive Orders 13175 (Consultation and Coordination with Indian Tribal Governments) and Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations).

The Executive Orders require direct, meaningful and pre-decisional consultation with affected Indian Tribes while planning major projects like the one that brings us together today. I want to make it clear that our Tribe was not properly “consulted” as this term is used in these orders. The Draft and Supplemental Draft both indicate BOR and the State have “coordinated” with Tribes but “coordination” and “consultation” are not the same. Consultation is a *process*, not an *event* like a hearing.

Above all, however, we expect that the consultation process will include the simple act of listening to Tribal concerns and working with Tribes to develop appropriate and effective resolutions. In addition, the consultation requirements of the Executive Orders I have mentioned simply have not been met.

That said, I note that the Supplemental Draft EIS specifically states that the potential adverse effects to historic properties have not been determined through consultation. I believe this comment also applies to impacts to cultural resources. I would like to remind the BOR and the State that federal law requires BOR to consult Tribes about these matters.

Impacts to Funding For our Rural Water Development Program

The cost of the Sheyenne River Alternative is \$700 million. The Dakota Water Resources Act authorizes \$200 million [indexed] dollars towards this project. The total value of this authorization with indexing to is somewhere in the neighborhood of \$250 million.

The Three Affiliated Tribes also receives funding for its water projects under the Dakota Water Resources Act. Under the Act, we are to receive \$70 million dollars for our water supply/distribution projects. These projects are a priority for our Tribe as many people on our Reservation do not have suitable drinking water.

Preliminary cost estimates of our identified water supply projects indicate that it will cost the Tribe approximately \$100 million dollars to provide an acceptable water supply system on our reservation. To date, the Tribe has only received \$5.825 million in funding under the DWRA for these water projects. The Tribes have had to borrow another \$2.5 million to continue to construct water supply projects.

We are concerned that the financial needs of the Red River Valley Supply Project will take precedence over the Tribe's needs. The Three Affiliated Tribes cannot support a project that will unjustly infringe upon the funding we depend upon for our water projects.

Operation of the Lake and Lake Levels

The United States Army Corps of Engineers manages the Lake Sakakawea and lake levels. Presently, there are 38 million acre feet of water in Lake Sakakawea. This is the preclude for water releases for the spring rise to accommodate the pallid sturgeon downstream. The Three Affiliated Tribes does not want to see the Lake levels drop below 38 million acre feet and would prefer to have a preclude at 41 million acre feet.

The Tribe is concerned about precludes and priorities concerning water diversions for Red River Valley Water Supply Project. What happens if both the Red River Valley and the Missouri River Basin suffer from drought at the same time and water is in short supply in both basins? What will be the priorities and precludes? These are concerns that need to be answered before the Tribe could support the project.

Impacts on Tribal Water Rights

The Three Affiliated Tribes have reserved water rights superior to all water rights in the State of North Dakota. However, if the State of North Dakota and the Federal Government and the State invest \$700 million into this project to provide water to a population of 450,000 people, the Three Affiliated Tribes will undoubtedly face significantly more opposition to the quantification of its water rights as the project will create powerful stakeholders that may be negatively impacted by the quantification of our water rights.

There are some people that believe that the water in the Missouri River is already over appropriated. If this is true, the quantification of our water rights may cut into the Project's right to water from the Lake and the stakeholders in the project may fiercely oppose the Tribe's water

claims. What assurances does the Tribe have that this will not happen? Until the Tribes have such assurances, it cannot support the Project. It must be made clear that any water diverted for this project will be junior to the Tribes' water rights.

Cultural Resource Concerns

All of the lands in the Area of Potential Effect in each of the proposed alternatives are part of the combined aboriginal homelands of the Mandan, Hidatsa and Arikara Nation. As such these lands cradle irreplaceable sacred and cultural resources associated with our Nation. The BOR and State must commit to working with the Tribe to avoid or minimize impacts to any cultural sites.

The Draft EIS states the Project will be administered in accordance with a programmatic agreement executed by Reclamation, the Advisory Council on Historic Preservation, and the North Dakota State Historic Preservation Officer. We expect that a new Programmatic Agreement will be drafted and developed in consultation with our Tribe and ALL TRIBES whose cultural resources could be impacted by any of the proposed alternatives for this project. The Tribe also expects that it will be signatories to any Programmatic Agreement.

CONCLUSION

Our Reservation was flooded over fifty years ago and we have not had adequate drinking water since the flood. We cannot support the project until we can insure that our needs will be met and every person on our Reservation will have adequate drinking water. Until we can work something out that addresses our concerns then we can talk about the Tribe's support for the project.

Fortunately, the Sheyenne River Alternative will require legislation. The Tribes will address its concerns with North Dakota's Congressional delegation in the hope that its concerns can be addressed in any legislation authorizing a diversion of Missouri River water for the Project.

Again, thank you for allowing me to comment today.