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April 17, 2007

Red River Valley Water Supply Project
U. S. Department of the Interior Bureau of Reclamation
Dakotas Area Office
P.O. Box 1017
Bismarck, North Dakota 58502-1017

To Whom It May Concern:

Submitted hereby are my comments on the Red River Valley Water Supply Project (RRVWSP) Supplemental Draft Environmental Impact Statement (SDEIS).

The SDEIS states that if a Missouri River basin alternative is chosen, there will be minimal impact to the Standing Rock Sioux Reservation. Since the Standing Reservation had its water intakes go dry in November 2003, the Bureau of Reclamation (BOR) position that the Missouri River Basin alternative serves the BOR well as it reduces BOR mitigation responsibilities. However, it seems highly unlikely from the data that the Tribe has that the BOR's position is consistent with the hydrology of the Missouri River basin.

In reviewing the SDEIS, I have set forth specific concerns below.

The current water levels for the Missouri River on the Standing Rock Reservation are dangerously low. I am concerned that additional diversion of the Missouri River for the RRVWSP will adversely impact the reservation's domestic water supply. Under current conditions such a diversion will result in the diminution of the reservation's primary drinking water sources. This is unacceptable. Moreover, it violates the United States' trust responsibility¹ to the Tribe by changing BOR policy concerning diversion of

¹ November 7, 2000, President Clinton issued Executive Order 13175, which provides in relevant part: Today, I reaffirm our commitment to tribal sovereignty, self-determination, and self-government by issuing this revised Executive Order on Consultation and Coordination with Indian Tribal Governments. This Executive Order builds on prior actions and strengthens our government-to-government relationship with Indian tribes. It will ensure that all Executive departments and agencies consult with Indian tribes and respect tribal sovereignty as they develop policy on issues that impact Indian communities.

Missouri River Waters without consulting with the Standing Rock Sioux and other Indian tribes who have federally recognized rights to water from the Missouri without consulting with those tribes on a government-to-government basis.

The Dakota Water Resources Act of 2000, which authorizes the RRVWSP, also authorizes the Secretary of Interior to construct, operate and maintain an MR&I water system on the Standing Rock Reservation. The Tribe's MR&I project has not been completed. There are numerous homes on the reservation that are not connected to the Standing Rock MR&I system because funds have not been provided to complete the system. The BOR should not and must not give priority to the RRVWSP to the detriment of the MR&I system on the Standing Rock Reservation. People on the reservation are already suffering due to the lack of water and yet the BOR has placed a higher priority on finding a solution to a problem that has not yet occurred (a 1930s-type drought in eastern North Dakota) and may, in fact, never occur. This type of reckless disregard toward the public health of members of the Standing Rock reservation is a perfect example of environmental injustice.

The Dakota Resources Act does not prioritize either project nor does it describe payment methodology. Nevertheless, the BOR has chosen to pay the Standing Rock Sioux Tribe the \$80 million owed for the completion of the MR&I system in yearly increments of \$1 million. This payment structure means that our people will wait about eight decades for the completion of the said project. Yet, as noted in Executive Order 13175, f.n.1, above, the Dakota and Lakota people have:

“a unique place in our [American] history. Long before others came to our shores, the First Americans had established self-governing societies. Among their societies, democracy flourished long before the founding of our Nation. Our Nation entered into treaties with Indian nations, which acknowledged their right to self-government and protected their lands. The Constitution affirms the United States' government-to-government relationship with Indian tribes.”

There is no logical reason for BOR to prioritize the RRVWSP more highly than providing our people drinking water from the river our ancestors relied on for their Mni Wiconi or Water of Life. Moreover, our tribal population is growing faster than the non-Indian population of eastern North Dakota. By 2050 our population is projected to double in size. Thus, on its present schedule, the Tribe's MR&I will be inadequate for the reservation's needs before it is finished. Accordingly, the BOR must review its data because its conclusion that the significant diversion of water from the Missouri that the RRVWSP will require will force us from our homeland for lack of water for domestic use.

The comment period for the SDEIS was artificially brief. There was substantive change from the DEIS to the SDEIS. While the DEIS was open for comment for more than one year, the SDEIS was only open for comment for an abbreviated 45-day period. This is indefensible. The NEPA process was created to involve the public in the planning

process. The 45-day comment period allowed after the SDEIS was issued is clearly an inadequate time period for the affected Indian tribes and public time to thoroughly review and respond to the implications of the substantive change proposed at this late date to such a massive undertaking as RRVWSP.

As noted, the United States has a trust responsibility to Indian Tribes and the RRVWSP does not adequately address this issue. Instead, the SDEIS states that impacts to the water supply on the Standing Rock Reservation are “undetermined” (Appendix J.14). The federal government’s trust responsibility requires federal agencies to consider the potential effects of their activities on Indian Trust Assets (ITA), consult with the affected Indian tribes and take reasonable actions necessary to protect the tribes, their members and the ITA. The SDEIS states that Indian water rights are not considered an ITA because they have not been quantified (p. 3-102). Yet as an Executive agency, the BOR has no authority to act without “consult[ing] with Indian tribes and respect[ing] tribal sovereignty as the [agency] develop[s] policy on issues [like water rights] that impact Indian communities.” Executive Order 13175, President Clinton, November 7, 2000.

The SDEIS proposes to address a possible contamination from the Missouri River to the Red River by constructing a biota treatment plant. However, the SDEIS utterly fails to address contamination that could occur if the Red River water cross-contaminated the Missouri River. In addition, the SDEIS also does not adequately address the issue of what pollution, if any, would occur from the creation and operation of a biota treatment plant on the Missouri River. The Standing Rock Sioux Tribe has not been consulted or informed concerning BOR’s emergency plans in the event there was a chemical or other type of accident at the biota treatment plant and the Missouri River was polluted. This is a major flaw in the SDEIS. A flaw that must be addressed both through government-to-government consultation with the affected tribes and by careful planning to avert such potential emergencies. The Tribe has one major source of drinking water, i.e., the Missouri River. Without that water, the reservation will be come unlivable. This is an outcome the Tribe completely rejects. We respectfully demand consideration as human beings. The Endangered Species Act apparently provides more protection to flora and fauna than the BOR is willing to provide the First Americans. WE ARE HUMAN BEINGS!

In conclusion, the SDEIS does not adequately protect Indian people or Indian Trust Assets. Under it, the BOR fails to meet the federal government’s trust responsibility to Indian tribes and their members which would be adversely affected in the event the project was completed by diverting significant Missouri River flowage. These issues are of critical import to the tribes and their members. Executive Order 13175 and common sense demand that the BOR conduct government to government consultation with the tribes so that our homelands will continue to have the water that was reserved for us when the Senate ratified and proclaimed the 1868 Treaty, 15 Stat. 635.

For the foregoing reasons, the Standing Rock Sioux Tribe cannot support the RRVWSP unless and until the BOR consults with the affected tribes on a government to

government basis and unless and until the BOR completes the Standing Rock Indian Reservation's MR&I program.

Sincerely,

A handwritten signature in black ink, appearing to read "Adrienne Swallow". The signature is written in a cursive style with a large, sweeping initial "A".

Adrienne Swallow

Environmental Protection Specialist