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Oglala Sioux Tribe

Fax

To: Signe Snortland **From:** John Yellowbird Steele, President

Fax: (701) 250-4326 **Pages:** 6 including cover

Phone: **Date:** 4/25/2007

Re: Comment—Red River Valley WSP **CC:**

- Urgent For Review Please Comment Please Reply Please Recycle

● **Comments:**

Attached is a 5 page comment on the Red River Valley Water Supply Project.

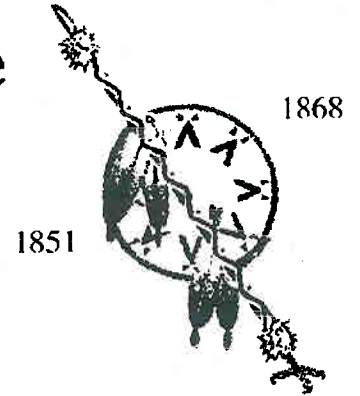
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Oglala Sioux Tribe

Office of the President

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John Yellow Bird Steele

April 25, 2007

U.S. Bureau of Reclamation
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OGLALA SIOUX TRIBE Natural Resources Regulatory Agency



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Fax

To: Signe Snortland **From:** Michael Catches Enemy

Fax: 701-250-4326 **Pages:** 4 (cover page included)

Phone: **Date:**

Re: Comment to RRVWSP SDEIS **CC:**

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

• **Comments:**



Oglala Sioux Tribe

Natural Resources Regulatory Agency

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April 24, 2007

US Bureau of Reclamation
PO Box 1017
Bismarck, ND 58502-107

RE: SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT
– RED RIVER VALLEY WATER SUPPLY PROJECT

As the Natural Resources Director for the Oglala Sioux Tribe Natural Resources Regulatory Agency (OST NRRA), I respectfully take this opportunity to comment on the Supplemental Draft Environmental Impact Statement (SDEIS) for the Red River Valley Water Supply Project (RRVWSP).

The OST NRRA has serious concerns with the proposed project as described in the SDEIS. We are very concerned with the impact of this project on the Treaty rights and the Winters Doctrine reserved water rights of the Oglala Sioux Tribe.

The reserved water rights of the Oglala Sioux Tribe are very important to render our reservation a permanent homeland, as guaranteed in the Treaty of Fort Laramie of April 29, 1968 (15 Stat. 635.) The Oglala Sioux Tribe retains unresolved off Reservation claims under the Fort Laramie Treaty of April 29, 1868. Article II of the 1868 Treaty defines the boundaries of the Great Sioux Reservation, as follows:

The United States agrees that the following district of country, to wit, viz: commencing on the east bank of the Missouri River, where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of the State of Nebraska strikes the river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of beginning; and in addition thereto, all existing reservations of said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the (Sioux Nation)... (15 Stat. 635-636).

The Sioux Nation rejected the judgment award that was affirmed by the United States Supreme Court in *United States v. Sioux Nation of Indians*. (448 U.S. 371, 100 S. Ct. 2716 (1980)). Consequently, we retain our claims under the 1868 and 1851 Fort Laramie Treaties.

Article II of the 1868 Treaty makes clear that our land claims extend from the 104th parallel to “the east bank of the Missouri River.” (15 Stat. 636). Clearly, the Missouri River and the river bed of the Missouri are defined in the 1868 Fort Laramie Treaty as Sioux Country; however this is not reflected in the SDEIS. Our treaty rights are being ignored by the Bureau of Reclamation. By establishing long term plans for the diversion of Missouri River waters to the Red River Valley, the Bureau of Reclamation proposes to establish *de facto* abrogation of our rights. That is unacceptable.

Our treaty rights are not an historical anomaly; they remain in effect, today. In the SDEIS, the Bureau of Reclamation ignores our rights, and proposes long-term water allocations from the Missouri River that divert Indian water to non-Indian water uses, in violation of our treaty right to the use of water.

The Missouri River is a primary water source to fulfill the Tribe’s reserved water rights under the Winters Doctrine. The section in the SDEIS p. 3-102 on Indian reserved water rights is inaccurate, stating “Indian water rights, when quantified, constitutes an ITA.” The SDEIS implies that Indian reserved water rights which have not been quantified are not protected property rights of the Tribes, which is inaccurate.

The SDEIS proposes additional water diversions from the Missouri River, to contribute to existing diversions up to 1.2 million acre feet. The SDEIS includes an estimate for future water depletions of only 155,300 acre-feet; which would include the Oglala Sioux Tribe and all other water depletions.

The SDEIS bases its estimates of future depletions on historic depletions. The SDEIS should reflect a more realistic water diversion estimate instead of promoting non-Indian water development and under estimates the magnitude of Tribal water claims and potential future water withdrawals of the Tribes.

Tribes such as the Oglala Sioux Tribe should also be afforded an opportunity to have a public comment period such as those held on March 1, 2007 in Ft. Yates, ND and other places prior to any further actions to be taken. These public meetings should be held on other reservations as well that will be affected by this proposed project, like right here on the Pine Ridge Reservation.

The OST NRRA asserts that the Missouri River is already over-allocated without considering the Tribes’ senior rights to the Missouri River. We also assert that the Oglala Sioux Tribe is indeed a “river Tribe” and not just a “Missouri River Basin Tribe” or a “non-river Tribe” as has been stated by several federal agencies including, but not limited to the Bureau of Reclamation and the US Army Corps of Engineers. The Mni Wiconi Act provides for Missouri River water through our intake near Ft. Pierre, SD with a pipeline that is still being constructed to connect into the existing groundwater system on the Pine Ridge Reservation.

The Oglala Sioux Tribe is greatly concerned that the construction of this RRVWSP project will adversely impact the availability of water downstream on the Missouri River, especially to Missouri River Basin Tribes and river Tribes such as the Oglala Sioux Tribe. This project will also result in environmental impacts on the river itself.

We appreciate the fact that our brothers and sisters, namely the Standing Rock Sioux Tribe, experienced a water shortage in 2003 that affected the operation of their hospital, schools, Tribal

government, businesses and residents. We know the Standing Rock Sioux Tribe is in dire need of funding to repair their existing intakes since their reservation relies primarily on Missouri River water. We as the Oglala Sioux Tribe could face this same fate in the future. Projects such as this proposed Red River Valley Water Supply Project are to prepare for future water shortages; however it seems very unfair that the Standing Rock Sioux Tribe is currently facing this challenge of water shortage once again, yet their MR&I project seems to be overlooked for adequate and equal assistance.

As an agency of the Department of the Interior, the Bureau of Reclamation still holds a trust responsibility to protect the trust assets of the Tribes. At present, these Indian Trust Assets include water rights held by the Tribes and should be strongly considered, yet currently they are not in this SDEIS for this proposed project, nor has there been any major revisions made to the Indian Trust Assets in this SDEIS. Inter-basin transfer of water is not an option, especially when Indian water claims are jeopardized by non-Indian water projects such as this.

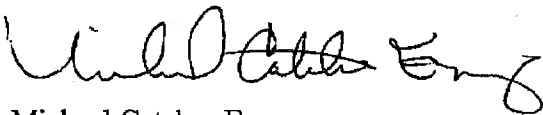
With the continued water fluctuations on the Missouri River with the management of water flow, adverse effects on cultural resources along the Missouri River banks will continue to be an issue and should be considered more in depth in the SDEIS.

The preferred alternative is the Sheyenne River Alternative; however the **Oglala Sioux Tribe Natural Resources Regulatory Agency supports the "No Action Alternative"**.

The SDEIS contains inaccurate information with respect to the present and future water requirements of the Tribes and understates the significance of Indian water rights as a current management issue in the Missouri River basin. The SDEIS contains very low estimates of future water depletions by Tribes and others. The SDEIS does not reflect the manner in which a fiduciary should act in carrying out its trust responsibility.

One last item is all the positive news releases that continue to primarily focus on supporters of the project. News releases should also focus and include opponents to this project. We appreciate this opportunity to comment on this SDEIS for the RRWSP and hope that consideration will be provided for our comments.

Sincerely,



Michael Catches Enemy
Natural Resources Director
Oglala Sioux Tribe
Natural Resources Regulatory Agency

Cc: Honorable John Yellow Bird Steele, Oglala Sioux Tribe President
Tom Conroy, Oglala Sioux Tribe Land Committee Chair
OST NRRRA File