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PUBLIC HEARING
ACCEPTING COMMENTS REGARDING
MISSOURI RIVER REVISED DRAFT ENVIRONMENTAL IMPACT STATEMENT
MASTER WATER CONTROL MANUAL

PROCEEDINGS HELD AT:
Cultural Resource Center
Eagle Butte, South Dakota
February 12, 2002
1:00 p.m. MST

Reported By: Ms. Lynne M. Ormesher, RPR, Capital Reporting
Services, P.O. Box 903, Pierre, South Dakota 57501
(605) 224-7611

* * * * *

1 Tuesday, February 12, 2002

2 CHAIRMAN BOURLAND: We're going to go ahead and
3 get started right now. But I guess before I do, it's always
4 been a tradition at Cheyenne River that we start all of our
5 meetings with a prayer. So if everyone will please rise,
6 remove cover, we'll open this meeting with a prayer.

7 (Opening prayer lead by Chairman Bourland.)

8 Recess was taken at this time.)

9 I want to welcome everybody here today. As
10 Chairman of the Cheyenne River Sioux Tribe it's indeed an
11 honor and privilege to be able to be here today and welcome
12 the United States Army Corps of Engineers as they have come up
13 here today to take comments on the revised draft environmental
14 impact statement for the Missouri River Master Manual.

15 I guess for those of you that may not be aware of
16 some of the history regarding the Corps of Engineers and the
17 Cheyenne River Sioux Tribe, it kind of goes back to about
18 1991. I was only the Tribal Chairman for about five months
19 when I was asked by now Senator, and then Congressman Tim
20 Johnson, to testify at a hearing in Washington, D.C. regarding
21 the Corps of Engineers control of the river system.

22 And basically at that time there was a huge
23 battle between the downstream states and the upstream states
24 regarding navigation versus recreation. And so anyway, I was
25 asked to testify on behalf of the tribes, and it was after my

1 testimony in Washington, D.C. that the first time to anyone's
2 recollection or knowledge that the Corps of Engineers sent a
3 delegation to Cheyenne River, and basically asked what they
4 could do for us and how they could help accommodate some of
5 our wishes.

6 It was at that first meeting that we sat down
7 and we looked for the first time at the Master Manual, and we
8 realized then that the Master Manual was not only an
9 incredibly complex document, but it had set forth a lot of
10 acres and lands for certain types of objects that had not been
11 carried out when the river was dammed up. There was a lot of
12 talk about recreation, reforestation, a number of different
13 things that never really happened.

14 So we have had kind of a love-hate relationship
15 over the years with the Corps of Engineers as a result of
16 that. We don't always agree or see eye to eye on how the
17 river has been controlled, and a lot of times we would like to
18 give our comments to the Corps as to how we think that things
19 should be done.

20 One area that has been a particular concern, and
21 I do think that the Corps most recently have begun to address,
22 is cultural preservation. Over the years we all know that an
23 immense amount of taking area lands have eroded away into the
24 reservoirs. And I say reservoirs plural because it's a
25 problem that is common to all the reservoirs on the Missouri

1 River in the State of South Dakota.

2 And with the erosion comes the constant problem
3 of cultural properties being lost. Everything from burial
4 sites to various different other sacred areas that have
5 basically washed away over the decades and are now laying in
6 the bottom of the lake. And so with this again the Cheyenne
7 River Sioux Tribe has attempted to work with the Corps to look
8 and do an assessment, I guess, of these properties.

9 But the issue that I know that is probably first
10 and foremost on a lot of people's minds is the environmental
11 impact. We all know and we all need to be very realistic
12 about the fact that these reservoirs or dams were created with
13 certain intentions of the United States Congress in mind.

14 Now for those of you that may not have a complete
15 background or history, essentially what happened is they have
16 this big flood, and I think it was in 1942 when the actual
17 flood happened, down on the Mississippi River. It didn't
18 happen in the Missouri River; it happened on the Mississippi
19 River. And by 1944 Congress passed a law that they called the
20 Flood Control Act, which basically was a result of a lot of
21 finagling and negotiation and politicing.

22 Now if the truth be known, and studies have shown
23 that the real culprit in that particular flood was not the
24 Missouri River, it was actually, I believe, the Mississippi
25 itself and the Ohio. But, of course, it was then politically

1 unacceptable to propose damming up the Ohio River, so they
2 picked on the big Missouri. Then, of course, the Missouri
3 River didn't have a lot of communities, with the exception of
4 Bismarck, Pierre, Chamberlain and a few others, and they
5 believed that there would be the least impact by controlling
6 this particular river.

7 And in doing so, Congress never took into account
8 that the river had its own ecosystem. It had its own
9 environment. As a matter of fact, by damming up this river,
10 the Missouri River, they not only destroyed hundreds of
11 thousands of acres of prime river bottom land, but an entire
12 ecosystem that existed in those river bottoms, that had
13 existed for thousands of years. Entire species were
14 displaced, moved or destroyed as a result of this damming.

15 In addition to that, the dams were created by the
16 engineers to have a certain life, a certain not only capacity
17 of water, but a certain life. And as a result of that they
18 took additional lands adjacent to the shoreline of the dam
19 called the taking area that it was considered that those lands
20 would erode. They would fall off and flake off into the
21 river, eventually up to the point where the dams would be all
22 silted in, and no longer usable, would no longer serve the
23 purpose of flood control or would no longer serve the purpose
24 of rural electrification, or whatever purpose they had in
25 mind, and thereby the system would be done.

1 Well, the problem with that is the fact that
2 where there was once a hilltop, now there was water, and the
3 end result is not only did they destroy an ecosystem by
4 damming up the river, but now they had moved it into new
5 territory, into lands that were never intended to have water.
6 And you can go down to the Missouri River right now, or go
7 down to Lake Oahe, you'll see entire shale cut banks eroding
8 at a tremendous rate, while our people buried their dead up on
9 those hills.

10 In addition, you have different ecosystems that
11 exist in these areas, and many of those ecosystems have since
12 washed away, have again went to the bottom of the lake. So
13 these are some of the concerns that we have.

14 In addition, the fact that one of the projects
15 that was promised was irrigation, and while the Cheyenne
16 River Sioux Tribe only had one irrigation project, on the
17 other side of the river there are many, many irrigation
18 projects.

19 One of the big concerns that we have had, and I
20 personally have had, of being a fairly environmental-minded
21 person, is the fact that many of these farmers have irrigated
22 these lands for a long time. They have dumped all sorts of
23 pesticides and fertilizers, insecticides, different things on
24 the land, and a lot of that was washed now down into the
25 watershed and may cause some problems. We don't know what

1 those problems may be, but we would sure like to know, because
2 of all of those, we could potentially have a mess.

3 Now, true, one irrigated farm is probably not
4 going to contaminate the entire river system, but if you put a
5 whole bunch of them in mass, it could have some impact.

6 Finally, the last thing that I have to say is
7 the potential impact that mining in the Black Hills has had
8 upon the river system. We all know that Homestake Gold Mine
9 dumped virtually hundreds of thousands or possibly millions of
10 tons of mine tailings into Whitewood Creek in just mining
11 alone and that's Homestake.

12 That washed down, of course, into the Belle
13 Fourche River. From there it washed down into the Cheyenne
14 River, and it all come to settle in one place -- actually two
15 places. It came to settle before the river was dammed up at
16 the original mouth of the Cheyenne River.

17 And after the river was dammed up, all the
18 tailings, up until the federal government forced them to
19 clean up their act, would have settled at the new mouth of
20 the Cheyenne River, which is only about a mile or better
21 upstream from the water intake that we have at Cheyenne
22 River.

23 I could stand here today and give you
24 statistics. I could give you all sorts of incidents of
25 health problems that our people have encountered on this

1 reservation since we began drinking the water out of that
2 intake. As a matter of fact, I notice these guys all have
3 bottled water here today, so you're very safe, but the rest of
4 us that live here don't always have bottled water, and we
5 believe that's an environmental concern.

6 We have talked to the Corps of Engineers in the
7 past about the problem that we have encountered in this
8 particular area with flooding. What happens, and it's
9 probably not going to happen this year, but what happens is
10 the ice jams. The ice on the Cheyenne River will break up.
11 It will all jam up and create a big dam. The water will back
12 way up and eventually it will burst free. When it bursts free
13 it moves that sediment base from the mouth of the river
14 downstream. In 1979 it moved it right through the intake of
15 the water we're drinking.

16 We have been working with EPA to try to determine
17 what is in that sediment base; that we realize the sediment is
18 well over 30 foot deep, but we would like to know what is in
19 there. And if there's any of these heavy metals or harmful
20 chemicals that have settled in that area, we would like to
21 know because that is an environmental concern.

22 So I guess with that being said, there's more
23 people than myself that have a few things to say, and I want
24 to thank the good colonel for coming on up to Eagle Butte, the
25 Corps of Engineers for coming and hearing what we have to say,

1 and I encourage the people here to step forth to the mike.
2 This is your day to testify. This is a formal hearing and
3 everything that you say is being recorded by a court reporter
4 and will be part of the official record. So please speak
5 freely and speak with your mind and your heart.

6 Again, I want to thank everyone for coming out
7 today and may God be with you. Thank you.

8 COL. KURT UBBELOHDE: Good afternoon. Welcome to
9 this tribal hearing. This is the 18th comment session on the
10 Revised Draft Environmental Impact Statement for the Missouri
11 River Master Manual. My name is Col. Kurt Ubbelohde. I'm
12 commander of the Omaha District of the United States Army
13 Corps of Engineers. With me today are members of the team
14 that prepared the RDEIS, Rick Moore, John Larandean, Jody
15 Farhut; and other core participants are Pem Hall, who is our
16 Native American coordinator out of the Omaha District, as well
17 as representing our cooperating agency WAPA, Mr. Jimmy Black.

18 We want everyone to have a common understanding
19 of the RDEIS. Copies of that, summaries and handouts, as well
20 as the environmental impact study are available at libraries
21 and project offices throughout the basin. You can get a copy
22 by writing us or get information off our web site, and any
23 member of the team can provide you with the addresses to do
24 that.

25 In my opening remarks I'll give a brief

1 description of the comment process, and then we'll take your
2 comments, and we'll stay as long as necessary to be sure that
3 everyone is heard.

4 This hearing session will come to order. Our
5 purpose this afternoon is to conduct a hearing on proposed
6 changes to the guidelines for the Missouri River Mainstem
7 System Operations. I would like to acknowledge and thank the
8 Cheyenne River Sioux Tribe for requesting and participating in
9 this hearing. This hearing is held in the true spirit of
10 government-to-government relations that the Corps wants to
11 maintain with the tribes of the Missouri River Basin.

12 Before I proceed, I would like to thank the
13 chairman for his openings remarks, and I would like to
14 identify any other elected members. If they wish to be
15 designated or identified at this time, if they would stand
16 up. Mr. Dave Hump, who is councilman and chairman of the
17 Water, Energy and Environmental Committee.

18 Ms. Lynne Ormesher of Capital Reporting Services
19 is recording this hearing today. She'll be taking the
20 testimony verbatim and will provide the basis for the
21 official transcript and record of this hearing. This
22 transcript, as well as all of the written statements and
23 other data, will be made part of the administrative record of
24 this action.

25 A copy of that transcript will be provided to

1 participating tribes. Persons interested in receiving is a
2 copy of the transcript for this session, or any other session,
3 need to indicate on one of the cards that are available from
4 Jody at the table.

5 Also, if you're interested in adding to our
6 mailing list, you can also indicate that on your card as
7 well. In order to conduct an orderly hearing it is essential
8 that I have a card from everybody wishing to speak; and on
9 your card give the name and whom you represent. If you desire
10 to make a statement and have not filled out a card, please
11 raise your hand and we'll furnish you a card.

12 The primary purpose of today's session is to help
13 insure that we all have the essential information we will need
14 to make our decision on establishing the guidelines for the
15 future operations of the mainstem system, and that this
16 information is accurate. This is your opportunity to provide
17 us with some of that information. We view this as a very
18 important opportunity for you to have an influence on the
19 decision. Therefore, I'm glad that you're here this
20 afternoon.

21 I want you to remember that today's forum is to
22 discuss the proposed changes in the operation of the Missouri
23 River Mainstem System that are analyzed in the Revised Draft
24 Environmental Impact Statement; and therefore, we should
25 concentrate our comments on that issue specifically.

1 It's my intention to give all interested parties
2 an opportunity to express their views on the proposed changes
3 freely, fully and publicly. It is in the spirit of seeking
4 full disclosure and providing an opportunity for you to be
5 heard regarding future decisions that we have called this
6 hearing. Anyone wishing to speak or make a statement will be
7 given the opportunity to do so.

8 The Missouri River Mainstem System consists of
9 Corps of Engineers constructed and operated projects, so
10 officially that makes us a project proponent; however, it is
11 our intention that the final decision on the future
12 operational guidelines on this project reflect a plan that
13 considers the views of all interests, focuses on the
14 contemporary and future needs served by the mainstem system
15 and meets the requirements established by Congress.

16 As hearing officer my role and responsibility is
17 to conduct this hearing in such a manner as to insure the full
18 disclosure of all relevant facts bearing on the information
19 that we currently have before us. If the information is
20 inaccurate or incomplete, we need to know that and you can
21 help us make that determination.

22 Ultimately the final selection of a plan that
23 provides framework for the future operations of the mainstem
24 system will be based on the benefits that we may be expected
25 to approve from the proposed plan, as well as the probable

1 negative impacts, including cumulative impacts. This includes
2 significant social, economic and environmental factors.

3 Should you desire to submit a written statement
4 and do not have it prepared, you may send it to the U.S. Army
5 Corps of Engineers and we can provide you that information as
6 to the address. You may also FAX in your comments or provide
7 them electronically via e-mail. The bottom line is that the
8 official record closes on the 28th of February 2002. To be
9 properly considered, all remarks, written or otherwise, must
10 be received by that date.

11 Before I begin taking testimony I would like to
12 say a few words about the order and procedure that will be
13 followed. When we call your name, please come forward to the
14 lectern; state your name and address; specify whether or not
15 you are representing a group, agency, organization or speaking
16 on behalf of yourself.

17 We would appreciate it if you would limit your
18 remarks so that everybody has an opportunity to express their
19 views, but we'll stay here as long as is necessary for
20 everybody to have their full say. If you are going to be
21 reading a statement, we would appreciate it if a copy could be
22 provided to the court reporter prior to speaking so that that
23 may facilitate her taking a verbatim transcript.

24 After all statements have been made, time will be
25 allowed for any additional remarks. And during the session I

1 may ask questions to clarify points for my own satisfaction.
2 It is the purpose of this hearing to gather information which
3 we will use to evaluate the proposed plan or alternatives to
4 it. And since open debate between members of the audience
5 will be counter productive to this process, I must insist that
6 all comments are directed to me, the hearing officer.

7 At this time we'll begin.

8 MR. RICK MOORE: Julie Thorstenson.

9 MS. JULIE THORSTENSON: Good afternoon. My name
10 is Julie Thorstenson, habitat biologist with the Cheyenne
11 River Game, Fish and Parks. The statement I'll be reading
12 will be on behalf of the Game, Fish and Parks Department.

13 There are several issues that need to be
14 addressed in the Revised Draft Environmental Impact statement,
15 such as noxious weeds cottonwood stands, and the tern and
16 plover lake habitat.

17 Noxious weeds are increasing problem throughout
18 the State of South Dakota. For years the Corps has
19 contracted with individuals to spray state lands. However,
20 until recently the reservation lands have been ignored. If
21 the entire shoreline is not addressed it is ultimately
22 pointless to spray noxious weeds. Seed dispersal occurs when
23 Lake Oahe water levels are fluctuated.

24 The Cheyenne River Sioux Tribe is working to
25 eradicate noxious weeds on tribal land within the

1 reservation. Since agriculture, mainly cattle production, is
2 the prime source of income for the Cheyenne River Sioux Tribe
3 tribal members, noxious weeds are extremely detrimental to
4 the economy. Noxious weeds lessen the productivity for
5 cattle and compete with valuable native species.

6 Noxious weeds affect the range quality,
7 productivity and the overall economy of the Cheyenne River
8 Reservation. That is why we feel that this must be
9 considered in revising the Corps Master Manual.

10 We are concerned with the negative effects that
11 the lake levels are having to the cottonwood trees. There is
12 very little to no age structure or recruitment within the
13 existing the cottonwood stands. When the lake is low, the
14 cottonwoods come in very thick, but they are then flooded,
15 not allowing a diverse age class.

16 The cottonwood is very important to the Lakota
17 people. It provided winter shelter and heat to our
18 ancestors. It is also vital habitat to the eagles. Eagles
19 are very culturally significant to the Lakota people.
20 Destruction of habitat along this flyway will lead to
21 reduction or elimination of eagles from the Cheyenne River
22 Sioux Reservation. It is important for the Lakota people to
23 be able to live with the eagles as they have for centuries.

24 If the cottonwood stands diminish, the Lakota
25 people will lose a part of their culture. In times when many

1 of our children are strangers to their culture and language,
2 we cannot afford to lose any more of our cultural ties.
3 Therefore, we feel cottonwood stands must be considered in
4 the revising of the Master Manual.

5 The RDEIS discusses the threatened piping plover
6 and the endangered least tern. However, when doing so there
7 is no mention of lake habitat. Therefore, we feel the RDEIS
8 is essentially incomplete. If the U.S. Fish and Wildlife
9 Service considers the lake habitat to be critical habitat for
10 these species, how then can it not be considered when
11 revising the Corps Master Manual.

12 The Cheyenne River Sioux Tribe has been
13 conducting adult census on Lake Oahe since 1994. We cannot
14 make a sound decision concerning the piping plover and
15 interior least tern without knowing how the proposed
16 alternatives will affect Lake Oahe habitat and essentially
17 their population.

18 In conclusion, we feel the Revised Draft
19 Environmental Impact Statement is incomplete and inaccurate
20 and are unable to fully support any alternative until
21 appropriate information is obtained.

22 COL. CURT UBBELOHDE: Thank you.

23 MR. RICK MOORE: Pamela Snyder.

24 MS. PAMELA SNYDER: Colonel and co-members of the
25 wildlife service representatives, thank you for coming today,

1 for listening to our comments. I've provided a statement to
2 the court reporter. I will speak from that in general, but
3 don't hold me to that, please.

4 My name is Pam Snyder. I am counsel to the
5 environmental protection department of the Cheyenne River
6 Sioux Tribe. Our address is Box 590, Eagle Butte, South
7 Dakota 57625. The comments that I make today are made on
8 behalf of the EPA and the weed committee for the tribal
9 council. The tribal council is considering final comments
10 which will be submitted to the Corps prior to the deadline for
11 the comments period.

12 The Cheyenne River Sioux Tribe is a major
13 stakeholder in the Missouri River Basin. As such, the Tribe
14 has a vested interest in the management of the Missouri River
15 Mainstem Reservoir System by the U.S. Army Corps of
16 Engineers. Revisions to the Corps' master water control
17 manual, the Master Manual, will directly and significantly
18 impact the Cheyenne River Sioux Tribe. By way of introduction
19 I would like to quote an excerpt from Executive Order 12898:

20 To the greatest extent practicable and permitted
21 by law, each federal agency shall make achieving environmental
22 justice part of its mission by identifying and addressing, as
23 appropriate, disproportionately high and adverse human health
24 or environmental effects of its programs, policies, and
25 activities on minority populations and low income populations

1 in the United States; Executive Order 12898, 1994.

2 Executive order 12898 places on federal agencies
3 the task of achieving environmental justice. To do so, the
4 agencies must identify and address disproportionately high
5 and adverse effects of their actions on minority and low
6 income populations.

7 Operation of the Missouri River is an action of
8 the Corps of Engineers requiring compliance with EO 12898.
9 Preparation of the Revised Draft Environmental Impact
10 Statement for the Missouri River Master Manual, the RDEIS,
11 requires the Corps to comply with the National Environmental
12 Policy Act, NEPA.

13 The combination of EO 12898 and NEPA creates a
14 process in which the Corps must not only identify the impacts
15 of its operation of the Mainstem Reservoir System, which
16 disproportionately and adversely affect the basin tribes, it
17 must also come up with ways to mitigate those impacts. While
18 the Corps has gone to great lengths to fulfill the former
19 obligation, much work remains to achieve the latter, for
20 example, to achieve environmental justice.

21 Water level fluctuations in Lake Oahe are of
22 great concern to the Cheyenne River Sioux Tribe. Fluctuating
23 water levels are eroding the western shoreline of Oahe and
24 destroying tribal, cultural and historic sites at an alarming
25 rate. Water quality is affected by lake level fluctuation

1 and ice movement near the intake for the tribe's main
2 drinking water supply. Water level changes also result in
3 the propagation of noxious weeds, as Ms. Thorstenson just
4 commented. This adversely impacts the tribe's cattle
5 industry. Each of these impacts will be discussed in my
6 remarks.

7 Lake level fluctuations are perpetuated under
8 all six alternative plans for operation of the Mainstem
9 Reservoir System being considered by the Corps of Engineers
10 in this RDEIS process, and to that reason and others, other
11 reasons I will touch upon in my remarks, the Cheyenne River
12 Sioux Tribe does not endorse any the current water control
13 plan or any of the alternatives under consideration at this
14 time.

15 Turning first to historic properties: According
16 to the Corps' Historic Properties Technical Report, the
17 Smithsonian Institution conducted a survey of historic
18 properties in the Missouri River Basin prior to inundation.
19 Although archeologically significant at the time, the surveys
20 are very meager by modern standards.

21 The Corps began comprehensive survey and
22 inventory programs in 1974. Because they took place after the
23 lakes were filled, these surveys involve lands at or above
24 normal pool elevations. The combination of the Smithsonian
25 and Corps surveys include 212,000 acres surveyed and 1400

1 sites inventoried.

2 Although the 21,000-acre figure sounds
3 impressive, the Corps goes on to state at page four of its
4 report that it is reasonable to speculate that not less than
5 50 percent of all historic properties existing within the five
6 downstream projects are normally inundated. In other words,
7 this cuts the number of surveyed sites above the pool from
8 1400 down to 700 or less.

9 Incidentally, only the five downstream reservoirs
10 are included in these numbers because Fort Peck was inundated
11 at the time of the Smithsonian surveys. Little was known
12 about Fort Peck's archeological resources until recently,
13 states the Corps at page 3-169 of the Master Manual RDEIS.
14 Little was known until the Corps sponsored a survey of 2.3
15 percent of the shoreline of Fort Peck Reservoir. And this
16 survey revealed 159 sites, which, when extrapolated, could
17 yield 2000 more sites on the shoreline of that reservoir. Why
18 is extrapolation necessary? Why were only 2.3 percent of the
19 shoreline surveyed?

20 Regarding historic properties at the five
21 downstream reservoirs, the Corps lists 1402 archeological
22 sites in and adjacent to Lake Sakakawea, 1,114 at Lake Oahe
23 and 165 other archeological sites, for a total of 2,681
24 sites, found at RDEIS page 3-169. Obviously, these numbers
25 differ from the Corps' reference to 1400 sites in its

1 technical report on historic properties supporting the
2 RDEIS.

3 The difference raises the question, what are the
4 real numbers? Even more important, however, is the question
5 are the numbers accurate and complete? The answers to these
6 questions are crucial because the Corps' evaluation of the
7 potential for erosion of historic properties from the RDEIS
8 alternatives for operation of the Mainstem Reservoir System
9 were based upon the Corps' estimation of the number of
10 historic properties on the shorelines of the respective
11 reservoirs.

12 It is the position of the Cheyenne River Sioux
13 Tribe that the Corps has not taken steps necessary to
14 adequately identify historic properties within the area of
15 potential effect of its operation of the Mainstem Reservoir
16 System.

17 Title 36 of the Code of Federal Regulations
18 Section 800.4 requires the Corps to gather information from
19 Indian tribes and take the steps necessary to identify
20 historic properties within the area of potential effects,
21 found at 36 CFR section 800.4(a)(4) and (b). The level of
22 effort required of the Corps includes making a reasonable and
23 good faith effort to carry out appropriate identification
24 efforts, which may include background research, consultation,
25 oral history, interviews, sample field investigation, and

1 field survey. The agency official shall take into account
2 past planning, research and studies, the magnitude and nature
3 of the undertaking, and the degree of federal involvement, the
4 nature and extent of potential effects on historic properties,
5 and the likely nature and location of historic properties
6 within the area of potential effects, found at 36 CFR Section
7 800.4(b)(1).

8 The Tribe acknowledges that the Corps' has
9 consulted with it concerning historic properties. However,
10 the Tribe lacks the capacity to adequately respond to Corps
11 inquiries because it lacks the funding and manpower to
12 undertake a comprehensive survey of historic properties on the
13 shoreline of Lake Oahe. Moreover, while the Corps has
14 apparently conducted studies of historic properties in the
15 Missouri River Basin, those studies do not constitute a
16 systematic, comprehensive survey. Such a survey is needed.

17 In 2000 more than 150 previously unrecorded
18 traditional and cultural properties were found by the CRST,
19 the Cheyenne River Sioux Tribe's preservation office in the
20 course of surveying recreational lands slated for transfer
21 from the Corps to the Tribe under the Terrestrial Wildlife
22 Habitat Restoration Legislation, known as mitigation.

23 These recreation areas constitute a small
24 percentage of Oahe's western shore within the Cheyenne River
25 Sioux Tribe Reservation. If the numbers are extrapolated to

1 the entire western shoreline, then many more sites could be
2 added to the Corps' list of known sites based on this
3 relatively small survey alone.

4 It is unlikely that the newly found sites were
5 utilized by the Corps in calculating its historic properties
6 index values for Lake Oahe in the RDEIS. The properties are
7 not listed in the Omaha District's Historic Properties
8 Database file, attached as Exhibit A to the Historic
9 Properties Technical Report. This is not surprising, since
10 the date of the database file is 1993, and the date of the
11 technical report is 1994.

12 If these newly discovered sites were not included
13 in the Corps' evaluation of the impacts of the proposed
14 alternatives on historic properties, then certainly the as-yet
15 undiscovered sites on the remaining lands on the western shore
16 of Lake Oahe were not considered. The Corps clearly states in
17 the RDEIS that its evaluation of the impacts of its operation
18 of the Mainstem Reservoir System is based upon known sites
19 only.

20 In Section 5 of the RDEIS, the Corps states that
21 the long-term potential for erosion at each known site was
22 evaluated based on the monthly water level in each of the
23 three upstream lakes and Lake Sharpe, RDEIS page 5-137. It
24 states at page 7-183 that only the effect to known sites is
25 considered in the Historic Properties Index.

1 Getting back to 36 CFR Code of Federal
2 Regulations, Part 800, given the nature and extent of
3 potential effects on historic properties, and the likely
4 nature and location of historic properties within the area of
5 potential effects, the Corps' efforts to date do not
6 constitute a reasonable and good faith effort to carry out
7 appropriate identification efforts, which may include
8 background research, consultation, oral history interviews,
9 sample field investigation and field survey, found at 36 CFR
10 Section 800.4(b)(1).

11 It is a foregone conclusion that operation of the
12 Mainstem Reservoir System on the Missouri River is a federal
13 undertaking of incredible magnitude pursuant to 36 CFR Section
14 800.4(b)(1). So is changing that operation. The Corps' level
15 of effort in identifying historic properties on the shorelines
16 of the reservoirs is also driven by the nature and extent of
17 the potential effects of river operations on historic
18 properties.

19 The Corps recognizes that historic properties
20 located within the reservoir zone are subject to annual
21 fluctuation, and properties located within a few vertical
22 feet up or down from that zone, are likely to receive a wide
23 range of severe impact. Now, given the magnitude of the
24 Corps' undertaking and the extent of the potential effects on
25 historic properties, the level of effort required of the Corps

1 in identifying historic properties subject to destruction due
2 to wave action and erosion, is high.

3 The Corps' obligation with regard to historic
4 properties does not stop there, however. In addition to
5 identifying historic properties and assessing adverse effects
6 on them, Corps officials must develop measures in the RDEIS
7 to avoid or mitigate such effects. The Corps acknowledges
8 this obligation at Page 12 of its Technical Report on Historic
9 Properties, where it states, Procedural compliance with the
10 National Historic Preservation Act and NEPA further requires
11 description, evaluation of, and agreement upon, any measures
12 proposed to mitigate the adverse effect, or selection of an
13 alternative to the federal undertaking in question.

14 The Corps quickly rules out the idea of
15 developing an alternative to operating the existing reservoir
16 system, or an alternative for operating the reservoir system
17 that would not adversely impact historic properties. Instead,
18 it admits that mitigative measures to lessen the severity of
19 the impact may be the only means of compliance.

20 Unfortunately, mitigation measures called for
21 under Section 106 of the National Historic Preservation Act
22 are lacking in the RDEIS. The Corps tells us that lake level
23 fluctuations and wave action are inevitable in the operation
24 of the Mainstem Reservoir System. It states that known
25 historic properties, which include, but are not limited to,

1 prehistoric sites, tribal cultural resources, and historic
2 sites, are adversely affected by all the alternatives.
3 Increased conservation during droughts is likely the primary
4 factor leading to this result, and this is at Page 7-233.

5 The Corps then points to the bank stabilization
6 efforts undertaken in the lower basin as evidence of its
7 attempts to mitigate the adverse impacts of reservoir
8 operations on historic properties. Table 3.15-1 at Page 3-171
9 of the RDEIS details those efforts. Only 21 bank
10 stabilization projects are listed for a total expenditure of
11 \$1,759,000 over 23 years.

12 Repatriation of Native American remains under
13 the Native American Grave Protection and Repatriation Act
14 adds little to the Corps' column. When compared with the
15 millions, if not billions of dollars being spent or
16 sacrificed to mitigate the adverse impacts of river operation
17 on three listed species in the basin, the Corps' efforts at
18 addressing the destruction of irreplaceable historic
19 properties would be laughable if the situation were not so
20 serious.

21 Clearly, the Corps has thrown up its hands. In
22 its Historic Properties Technical Report, the Corps advises
23 that measures to mitigate the loss of value inherent in
24 historic properties involve either site protection or
25 information retrieval, archeology. Either measure, says the

1 Corps, requires substantial investment of money and manpower,
2 both of which have historically been in short supply compared
3 with the legislative compliance requirements.

4 The Corps concludes its discussion of mitigation
5 requirements at Section 7.20.1 of the RDEIS with the following
6 remarkable statement: Because the Corps has existing programs
7 to address the protection of sites or their documentation if
8 protection cannot be accomplished, new effort to mitigate the
9 effects of the operation of the Mainstem Reservoir System on
10 known sites are not required. Continued effort to protect the
11 sites are necessary to limit the adverse effects of the
12 exposure or loss of the known sites.

13 Finally, NEPA and the National Historic
14 Preservation Act require the Corps to not only develop
15 measures to avoid, minimize or mitigate adverse effects on
16 historic properties of operation of the Mainstem Reservoir
17 System, but to include a binding commitment to such measures
18 in its Record of Decision on the Master Manual. The
19 near-nonexistent status of the Corps' mitigation measures for
20 historic properties raises the question: Binding commitment
21 to what?

22 In sum, historic properties are as priceless and
23 threatened as the least tern, piping plover and pallid
24 sturgeon. The entire river system is being altered to address
25 the plight of these animal species. The Cheyenne River Sioux

1 Tribe is requesting that the Corps give the same consideration
2 to its endangered historic properties.

3 Turning to quality, in the water quality sections
4 of the RDEIS, the Corps tells us that problems exist.
5 Elevated concentrations of arsenic, manganese, iron and
6 beryllium have been monitored in Lake Oahe and its inflows.
7 In 2000, state water quality standards for mercury,
8 phosphorus, sulfate and iron were exceeded at Lake Oahe.
9 Arsenic commonly exceeds state water quality standards in
10 Missouri River lakes.

11 Although arsenic, selenium and mercury occur
12 naturally in the soils of the basin, mining in the Black Hills
13 has contaminated the Cheyenne River with high levels of
14 mercury. The Cheyenne flows into Lake Oahe and forms the
15 southern boundary of the Cheyenne River Sioux Tribe
16 reservation.

17 In addition to these elements, sediment is being
18 eroded, transported and deposited within the dam system. This
19 is a normal process. Sediment was continually moved by the
20 Missouri River even before it was dammed. Now, however,
21 sediment is settling out in the reservoirs and at the mouth
22 of tributaries flowing into them.

23 Significant sediment deposition is apparent at
24 the mouth of the four major tributaries that flow into Lake
25 Oahe: The Cheyenne, the Moreau, the Grand and the Cannonball

1 Rivers. The sediment in these deltas contains arsenic,
2 mercury and other metals. Arsenic and mercury are of
3 particular concern to the Cheyenne River Sioux Tribe, because
4 the intake for the tribes main public water supply system is
5 located in Lake Oahe adjacent to the Cheyenne River delta.

6 Wave action, lake level fluctuation and ice
7 movement stir up sediment. Let's look at wave action quickly.
8 According to tables 5.4-1 and 7.4-1 in the RDEIS, wave action
9 erodes and agitates the lake sediments during low lake levels,
10 potentially causing elevated dissolved arsenic concentrations
11 in the water column. These elevated arsenic concentrations
12 during low lake elevations and drought conditions may affect
13 domestic water use, requiring additional treatment prior to
14 domestic use and cause chronic effects to aquatic life in
15 lakes. The adverse effects are greatest during droughts when
16 lakes are drawn down and bottom sediments are exposed to wave
17 action, RDEIS pages 5-6-28 and 7-26-28.

18 Both Oahe Dam releases and lake levels have
19 varied considerably. In its water quality technical report
20 supporting the RDEIS, the Corps states releases have been
21 extremely variable since the project became fully
22 operational. Daily outflows range from less than 1000 cubic
23 feet per second up to 55,000 cubic feet per second. Regarding
24 lake levels, the technical report states: Much fluctuation
25 has occurred throughout the history of the reservoir; Corps

1 1994, page 19.

2 Several years ago the Missouri River Basin States
3 Association asked the Corps to sample and analyze delta
4 sediment to test the hypothesis that raising and lowering lake
5 levels result in sediment resuspension, potentially adding
6 contaminants to the reservoir and degrading water quality.
7 This is a main concern brought to the Corps attention. The
8 Corps did sample several pollutants, including mercury,
9 cadmium, lead, chromium, zinc, selenium, arsenic, nickel and
10 pesticides. Significantly, arsenic consistently showed
11 significant increases, sometimes exceeding a factor of 10.

12 Moreover, the finer the sediment, the greater the
13 arsenic concentrations. Corps 1994, Pages 44 and 52. Finer
14 sediments are generally more chemically active, thus
15 perturbations such as wind-wave action can result in chemical
16 changes associated with the transfer of materials from an
17 anaerobic environment in the sediment to an aerobic
18 environment in the overburden water. It is also suspected
19 that storm events and high winds, which are common in the
20 Missouri River Basin, cause high metal concentrations in the
21 water.

22 The Corps emphasizes that the stirring of bottom
23 sediments in shallow areas of the reservoir is going to occur
24 no matter what the pool elevation. This is a natural, ongoing
25 process which occurs at all reservoirs with relatively soft

1 bed sediments, Corps 1994 page 44.

2 On the other hand, delta growth is a dynamic
3 process, and as the reservoir fills, areas which are now
4 comprised of fine sediments, silts and clays, will eventually
5 become areas dominated by more coarse sediments, sand, as the
6 delta grows in the downstream direction. As particle size
7 increases, arsenic concentrations generally decrease.
8 Unfortunately, the Oahe, the Moreau and the Grand River deltas
9 could not be analyzed for particle size relationship, since
10 only one sample was taken.

11 In sum, arsenic exists in the sediment of the
12 deltas of tributaries flowing into Lake Oahe. The arsenic is
13 found in higher concentrations in the fine sediment. Wave
14 action, lake level fluctuation and ice movement stir up the
15 arsenic bearing sediment and suspend it in the water column.
16 None of the alternatives being considered by the Corps in the
17 RDEIS will change this fact of reservoir operations.

18 The Corps' solution, test and treat your drinking
19 water because the stirring of sediment in shallow areas is
20 inevitable no matter what the Corps does. This suggestion is
21 hardly encouraging to the Cheyenne River Sioux Tribe, whose
22 intake for its main public water supply system is located in
23 the Cheyenne River arm of Lake Oahe.

24 Turning to mercury, we learn that this pollutant
25 is ubiquitous in basin, but more of it was contributed to Lake

1 Oahe from mining operations at the Homestake Gold Mine in the
2 Black Hills. Although the mine was declared a Superfund site,
3 and thus this point source of contamination has been
4 controlled, the Cheyenne River sediments remain contaminated
5 and continue to be deposited into the Cheyenne arm. Corps
6 1994, Page 32.

7 While observed mercury levels are below EPA
8 drinking water standards, the Corps advises that the presence
9 of mercury and its variable concentration suggests that it
10 should be monitored by municipalities which use the lake as a
11 water supply.

12 Fish tissue samples collected by the South Dakota
13 Department of Game, Fish and Parks and the Cheyenne River
14 Sioux Tribe in 2000 in the Cheyenne River, the Moreau and the
15 Grand Rivers and these arms of Lake Oahe contained sufficient
16 mercury to warrant a consumption advisory on fish caught in
17 waters adjacent to tribal lands. As a result of the study,
18 the South Dakota Department of Game, Fish and Parks was to
19 extend the area of study to other portions of Lake Oahe in
20 2001.

21 As with historic properties, the Corps'
22 identification and assessment of water quality problems in the
23 Missouri River Basin have been less than stellar. There is
24 limited information regarding how water quality has changed
25 since the construction of the Mainstem Reservoir System, says

1 the Corps in Section 3.5.7 of the RDEIS. Although monitoring
2 information is gathered by the Corps, the basin states, the
3 U.S. Geological Survey and EPA, no monitoring program exists
4 that integrates and evaluates all the information. RDEIS
5 pages 3-36 and 3-44.

6 Spatial variability prevents our monitoring
7 program from being a reliable indicator of the conditions
8 which exist at the water supply intakes says the RDEIS.
9 What's the Corps' suggestion? In light of this problem the
10 Corps suggests that personnel responsible for water quality
11 sampling should be updated in sampling techniques. The
12 Cheyenne River Sioux Tribe agrees.

13 The Tribe also agrees with the Missouri River
14 Natural Resources Committee and the Biological Resources
15 Division of the U.S. Geological Survey, that more science is
16 needed. The Missouri River Environmental Assessment Program
17 is a good start.

18 The purpose of the program is to provide the
19 scientific foundation for Missouri River management
20 decisions. The program hopes to expand current state and
21 federal monitoring efforts and start new ones. It will
22 establish a system-wide database containing information on
23 fish, wildlife, habitat and water quality and define the
24 baseline of current river conditions. The Tribe is pleased to
25 learn that both the public and government agencies will have

1 equal access to this database.

2 The environmental assessment program will also
3 conduct long-term monitoring of river resources and focused
4 investigations of the cause and effect relationship between
5 river operations and the river's response. Of course the
6 program is entirely dependent upon funding. Given the fact
7 that tribal drinking water is at stake, funding of the program
8 has environmental justice implications.

9 Neither has the Corps developed viable mitigation
10 measures for the water quality issues raised in the RDEIS.
11 Although the Corps acknowledges that resuspension of arsenic
12 and mercury from delta sediments and bioaccumulation of metals
13 in fish tissues are concerns of tribes in the basin. The
14 Corps' solution is not development of mitigation measures to
15 address these issues. Rather, the Corps advises local
16 governments to test their water before drinking it.

17 Along the same lines, we are told in the RDEIS
18 that the MCP leaves more water in the three upper mainstem
19 lakes during drought and reduces lake level fluctuation. The
20 increased volume improves water quality by diluting
21 pollutants. The GP options will improve water quality even
22 more because they will leave even more water in the lakes than
23 the MCP.

24 However, none of the alternatives limits the
25 suspension of metals into the water column and the

1 accumulation of toxic elements in fish tissue in Lake Oahe.
2 Thus, neither the CWCP nor any of the RDEIS alternatives being
3 considered by the Corps mitigate the water quality issue of
4 greatest concern to the Cheyenne River Sioux Tribe.

5 The Corps is correct in stating that it is not
6 the source of pollutants entering the Missouri River. Neither
7 does it regulate water quality in the basin. States, tribes
8 and the federal Environmental Protection Agency, EPA, manage
9 water quality under the Clean Water Act and Safe Drinking
10 Water Act. That the Corps is not the source of water
11 pollution or the regulator of water quality, however, does not
12 relieve it of its responsibility to satisfy the environmental
13 justice principles of Executive Order 12898 by identifying and
14 mitigating water quality problems created or exacerbated by
15 its management of the Missouri River Mainstem Reservoir
16 System. So far, no solutions have been offered.

17 What about dredging and removing the contaminated
18 delta sediments? What about erecting barriers to minimize
19 lake level fluctuation in the deltas and prevent ice
20 movement? What about covering the contaminated sediment with
21 coarser sediment? What about moving the intake for the
22 Tribe's public water supply system away from the Cheyenne
23 River delta?

24 Finally, let's take a brief look at hydropower.
25 The Cheyenne River Sioux Tribe is very concerned about

1 increased electricity rates for tribal members. It is the
2 tribe's understand that all of the alternatives being
3 considered in the RDEIS process would increase measures of the
4 MCP and the GP options would leave more water in the
5 reservoirs. This held-back water, known as head, constitutes
6 the capacity of the dams to produce hydropower.

7 As the water is released and run through the
8 turbines in the dams, power is generated. In this way GP 1528
9 would produce the greatest hydropower benefits. The CWCP
10 produces the least. The other alternatives fall in between.
11 The difference between GP 1528 and CWCP, however, is only 2.3
12 percent.

13 In spite of the fact that the MCP and the GP
14 options increase the capacity of the mainstem dams to generate
15 hydropower, all of the GP options decrease hydropower
16 revenues. How? By releasing water from the dams other than
17 during the summer and winter peak demand periods when the
18 hydropower is most valuable. The higher the demand for power,
19 the greater its value. Because demand is greatest in summer
20 and winter, energy produced during these seasons is of greater
21 overall value than energy produced in the spring and fall.

22 When water is released from the dams other than
23 during these summer and winter peak demand periods, revenue
24 is lost. And beyond that, WAPA, Western Area Power
25 Administration distributes the power, has to buy power to

1 replace the power that could have been generated if it could
2 release the water during these peak seasons.

3 In this way GP 1528 and GP 2028, the two GP
4 options which release only enough water in the summer to
5 maintain minimum navigation service, decrease annual
6 hydropower revenue by an average of \$8 to \$9 million when
7 compared to the CWCP. The GP options which split summer
8 season releases and release the least amount of water during
9 the summer peak demand period, that's GP 1521 and GP 2021,
10 have about a \$30 million average annual adverse impact on
11 hydropower revenues.

12 These revenue losses translate into increased
13 electricity rates for customers who purchase power from the
14 Pick-Sloan project through the Western Area Power
15 Administration, WAPA.

16 The magnitude of the hit caused by these
17 increased rates depends on the amount of power a particular
18 customer purchases from Pick-Sloan, from the Missouri River
19 dams. WAPA estimates that basin tribal customers purchase 60
20 percent of their total power from Missouri River hydropower
21 sources. As shown in figure 7.10-22 in the RDEIS, and Figure
22 A-9 in the Tribal Appendix to the RDEIS, the increase in
23 power costs incurred by basin tribes under the Gavins Point
24 options ranks from two percent for GP 1528 up to ten percent
25 for GP 1521 and GP 2021.

1 In other words, it appears to the Tribe from the
2 RDEIS that tribal electrical rates could increase anywhere
3 from two to ten percent, depending upon which alternative the
4 Corps selects. This is a serious increase to tribal members.
5 It will adversely impact affordable housing to tribal members,
6 and for that reason the Tribe is very concerned about the
7 impact of the alternatives on hydropower.

8 I want to thank the Corps representatives,
9 particularly you, Colonel, for coming today and listening to
10 our comments.

11 COL. KURT UBBELOHDE: Thank you.

12 MR. RICK MOORE: Next testimony, Harold Frazier.

13 MR. HAROLD FRAZIER: My name is Harold Frazier,
14 vice chairman of the Cheyenne River Sioux Tribe.

15 Just to elaborate on some of this, I guess on the
16 Master Manual, one of the things I got was the hydropower, and
17 from the way I read it, I see that some of your alternatives
18 are going to affect our electricity rates, and that's a huge
19 concern of tribal members, Native American members. If you
20 look on the census, the 2000 census, Ziebach County is the
21 poorest county in the nation, and that county is half of our
22 reservation, and I think Dewey County is like fifth overall.

23 So there's a lot of concern on the cost of
24 electricity. Many of our members only get about \$4,000 per
25 year to live on and can't afford electricity rates, and I

1 cannot understand why the federal government allows
2 cooperatives to charge outrageous electricity rates, because
3 we have the tributary flowing into the Missouri River into
4 Lake Oahe, the Cheyenne and Moreau River and lots of creeks
5 and draws.

6 Another thing, to comment on erosion, sediment,
7 you know, a lot of our land is going into the water and is
8 useless for the people. And I'm really upset about the
9 history and what the Corps has not done, I guess, on Cheyenne
10 River. The only trees that we have is along the Moreau
11 River. There's no -- we don't have no trees or any type of
12 vegetation like that.

13 I take offense to what the Corps has done in
14 regards to 1804 and 1806 roads. You know, look on our side of
15 the river, Cheyenne River here, there's no -- you go to the
16 east side of the river, on the non Indian side you have paved
17 roads up and down the river, and on our side there's no kind
18 of improvement, no recreation sites have ever been developed
19 on our reservation by the Corps, which I think there should
20 have been. It's in the past, but maybe they should
21 appropriate money and try to assist the Tribe in trying to
22 develop recreation sites.

23 And I'm going to problems in some portions of
24 your manual. I know one of them said there were seven sites
25 on our reservation by water intakes. We only know of two, and

1 the only question you guys gave your presentation to the Tribe
2 and I don't know, we were promised that map would be provided
3 to us and I haven't heard or seen of any map that's been
4 developed.

5 Again, I guess the main thing I'm concerned with
6 is the electricity rates. I think that we should get direct
7 power from Lake Oahe here. Thank you.

8 COL. KURT UBBELOHDE: Thank you very much.

9 Are there any others who care to make a
10 statement? Ma'am, could we get you to fill out a card?

11 MS. GERMAINE MEANS: I'm an elder of the Cheyenne
12 River Sioux Tribe, and I happen to be one of the left-over
13 products of the old Cheyenne Agency which was flooded by the
14 Corps of Engineers. And we have suffered not only in the area
15 of our land and historic elements, but there were so many
16 promises.

17 The other two areas have been addressed by the
18 government and Corps of Engineers, which as of today has not
19 been done, such as the permanent road system. And I drove the
20 road on the east side of the river, in essence, to the one we
21 received on the west side, and there's such a great,
22 tremendous difference there, and that never has been followed
23 through by the Corps of Engineers to my knowledge.

24 The other area is the historical site that is
25 very dear to us, and that's Medicine Rock Historical site

1 that sat on the east bank of the Missouri, right opposite the
2 Cheyenne River, Cheyenne Agency. There's a few other sites
3 that I don't have with me right now. I wasn't really
4 prepared to make any kind of statements that I could use
5 statistics.

6 But these are some of the things that just comes
7 to my mind that need to be addressed yet, and so then I'm
8 sitting here thinking of all of these other things that are
9 entering into play here, what's going to say and who is going
10 to live up to all this planning that is being done now; it
11 wasn't done and will it be done now.

12 There are so many other areas that we have
13 suffered as a result of the taking area, such as the
14 livestock. There was a lot of livestock which was lost down
15 along the Corps land because the high level mark far exceeded
16 what was anticipated. And so a lot of cattle have wandered
17 out in there because there was water and there was a big loss
18 that we still continue to take as of today.

19 The other thing is destroying continually,
20 continued on to destroy a lot of trees and shrubbery along
21 areas that are from the mouth of the Moreau west where again
22 high water level has far exceeded and is continuing to destroy
23 the land up in that area. A lot of these areas have not been
24 addressed as of yet today.

25 And so I have question in my mind, and a lot of

1 these statistics that have been taken and evaluations that
2 were taken, there's a lot of historical sites that a lot of
3 us old-timers are aware of that as of today have not been
4 considered or reviewed by the Corps of Engineers and I am
5 against this plan unless there is more input and more
6 specific areas that need to be addressed where we're going to
7 get some recognition and some action on behalf of the Tribe.
8 Thank you.

9 MS. MADONNA THUNDER HAWK: My name is Madonna
10 Thunder Hawk. I live on the east end of the reservation in
11 Swiftbird Community, where the old Cheyenne Agency used to
12 be. And as far as people that still live down in that area,
13 thanks to the Army Corps there's no mention of the old
14 Cheyenne Agency ever being in existence, after being gone
15 about 20 years. This was in the early '90s I came back and
16 there was a sign up that said Forrest City ramp, or
17 something. Anyway, that's just something that's bugged me
18 over the years.

19 But I just have a few comments. I'm not sure of
20 the process of the Army Corps of Engineers, and I mean to me
21 it's just this huge bureaucracy, like they all are, but the
22 comments I would like to make is I was really glad to see this
23 document here furnished by our tribe, comments of the Cheyenne
24 River Sioux Tribe, Department of Game, Fish and Parks. I'm
25 really proud of that, proud of our tribe and really proud of

1 this document, very impressed.

2 You know, we are no longer going to sit by and
3 let things happen. We're not going to acquiesce anymore. I
4 realize, also, that the Bush administration, and what's going
5 to happen with money appropriations and the cuts that are
6 going to come in all areas, so maybe this is just, you know,
7 something that has to be done because it's asked for, you
8 know. Maybe the plans are already cut and dried. Maybe you
9 guys are just going to go on in the first place.

10 But out here we're still tribal people and we
11 still have feelings for our land and we still have ties to the
12 land, and we know we're going to be struggling in generations
13 of struggle on issues like this. So I don't know your federal
14 agency, or what have you, but out here we're still people. We
15 have different feelings for the land and our resources.

16 So I'm glad to see that you've finally come, and
17 I think John had a lot to do with that because she's an
18 enrolled member here, and she also grew up down at Old
19 Agency. We stood by and watched that. The water come and
20 covered our homeland. So I have children and grandchildren
21 and they will still be here after I'm gone as the tribe, being
22 concerned about this whole issue of holding the federal
23 government's feet to the fire, regardless of what agency you
24 represent.

25 So I want to -- I'm sure you've had many welcomes

1 here, but I'll add mine. Thank you.

2 MR. LANNY LaPLANT: Hello. My name is Lanny
3 LaPlant and I'm a councilman from District 5, and I am
4 probably one of the last ones, with Madonna, from the Old
5 Agency who graduated, 1959, the last graduating class from
6 that school. Right after we got out, we got flooded. So I
7 guess that means a lot to us.

8 But my major concern here is as a long time
9 council representative we done the study here and I made
10 amendments or introduced resolutions to amend, being worried
11 about the intake of the waterlines down along the Cheyenne
12 River arm. I've introduced resolutions to move it over here
13 on the north side of the Moreau River where there's less
14 chance of pollutants from the gold mines.

15 I know it was in the news here Perkins County
16 applied for water, such as everybody else is doing. It was
17 not only approved but it would be feasible if we could extend
18 our waterlines over west to there, pick up their water needs
19 and also in the same process move our intake over on the
20 Moreau River side. If you have anything to do with it, I
21 think that would be a good thing for us, because a study was
22 done here within District 5.

23 I represent District 5, which is from Highway 212
24 south and Main Street east, like within a mile area. We had
25 the highest rate of cancer deaths within the last few years

1 since we've been here, and that study has been done, and I
2 don't know if it's material that was used to build the
3 pipeline. I probably blame part of it on that, plus the
4 remaining blame on the water that comes out of the Cheyenne
5 River. So that is my biggest concern, and I wish you could do
6 something to help us out, and I thank you.

7 COL. KURT UBBELOHDE: Are there any others who
8 wish to speak? Ma'am?

9 MS. GERMAINE MEANS: I have a question, but this
10 is off the record.

11 (Off the record discussion.)

12 COL. KURT UBBELOHDE: All right. If there are no
13 other speakers I would like to remind you that the
14 administrative record will be closed on the 28th of February
15 2002, and that anyone wishing to submit further testimony in
16 writing, electronically or by FAX, should do so by that time.

17 Again, if you wish to be added to our mailing
18 list to receive a copy of this transcript or any other
19 transcripts, please fill out one of the mailing cards at the
20 front table. Once again, I would like to thank the Cheyenne
21 River Sioux Tribe for requesting and participating in this
22 hearing in their tribal homeland, and this hearing session is
23 closed. Thank you.

24 (End of proceedings.)

25

1 STATE OF SOUTH DAKOTA)
2) CERTIFICATE
3 COUNTY OF HUGHES)

4
5

6 I, Lynne M. Ormesher, Registered Professional Reporter,
7 hereby certify that the foregoing pages 1 through 45,
8 inclusive, are a true and correct transcript of my stenotype
9 notes.

10 Dated at Pierre, South Dakota, this 20th day of February,
11 2002.

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Lynne M. Ormesher, RPR

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HISTORIC PROPERTIES

The C.R.S.T. Preservation Office has reviewed the United States Army Corp of Engineers Missouri River Master Water Control Manual and prepared the following commentary on behalf of the Cheyenne River Sioux Tribe. Historic properties under National Historic Preservation Act include historic and prehistoric archaeological sites, historic architectural and engineering features and structures and resources of significance to Native Americans and other social or cultural groups. The Master Manual has a property value index for historic sites that reflects an increase or a decrease in value concerning impacts to sites based on water levels. The higher the value the less effect on a historic site. The value index is created upon the number of "known" sites that exist along the lakeshores and then mathematically computing the percentage of site degradation occurring as a result of a water level impact.

The National Historic Preservation Act identifies properties that are included under the term historic properties however NHPA does not include in its definition section any language pertaining to Traditional Cultural Properties (TCP). Traditional Cultural Properties are discussed in NPS Bulletin 38 and this document the Master Manual does not reference. NHPA does make reference to "*Traditional religious and cultural properties*" in section 101(6)(A) but it does not identify specifics and makes absolutely no mention of these in the definitions section 301 (16 U.S.C. 47w).

The tribal position is that the Corp has failed to adequately identify all of the property types that are located along the lakeshores and that it has based its property value index on outdated and inaccurate information. The database used to develop the value index is dated for 1993 while the technical report is dated 1994. Furthermore the tribe believes that the projected impact zone used by the Corp to assess and/or calculate impacts to sites is inadequate because it does not extend far enough off of the 1620 elevation line. Erosion along the lakeshore causes sloughing and this sloughing reaches back onto the land quite a distance from the lakeshore and sites that are located above the 1620 line and sites located out of the impact zone do receive impacts and suffer degradation as a result of sloughing. Another concern the tribe has concerns the east bank of the lakeshore. Corp take lands on the east bank do not extend as far back from the shoreline as they do on the west bank lands. The take lands on the east bank and the Corp

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COE Master Manual

obligation to mitigate and preserve known sites only extends to the take land boundary line. Sites located above this line are receiving impacts due to lake operations but are they included in the known sites listing?

The Corp data used to establish its value index is simply too old and outdated to be used as the basis for the index. A case in point is in 2001 surveys were done on 20+ recreation areas scheduled to transfer to the State of South Dakota. Known sites located at these recreation areas were surveyed to check their condition and determine if or how they had been impacted since their original discovery. In this particular project several of the sites listed in the database and revisited by Corp archaeological personnel to investigate them were gone. They had been eroded and washed out into the lake. The tribe asserts that follow up surveys on the "known" sites has not been done on a regular basis to gauge whether or not existing sites lying along the lakeshore are 100%, 75%, 50%, 25% intact or have already been destroyed. This is extremely important to know because this information directly affects the existing database. The tribal assumption is the value index is based upon the number of known sites and that these sites are at 100% integrity. If however this is not true then the database information is already flawed and inaccurate and the value of the sites is off.

CONCLUSION

The tribe wants new surveys done on the lakeshores to locate and identify previously unknown sites referenced in NHPA but also TCP sites, which the Corp has little information on. Follow up surveys on known sites must be done to measure their current integrity against their original integrity when first recorded. To truly calculate the impact effect on sites based upon water levels TCP property types must also be included into the COE value index and all of the above concerns must be done. Remember that the alternatives presented in the Master Manual address impacts only to known historic properties and the tribal position is that no efforts have been made to factor in impacts to TCP sites or impacts to sites outside the projected impact zone. Based on the commentary the tribe at this time cannot endorse any of the alternatives currently listed in the Master Manual. If as we suspect that the database is inaccurate then the value index reflecting impacts to known sites is also inaccurate and does not portray a true measurement.