

1 U.S. ARMY CORPS OF ENGINEERS, OMAHA DISTRICT  
2 MISSOURI RIVER BASIN WATER MANAGEMENT DIVISION

3  
4 In Re: Proposed Changes to the  
5 Guidelines for the Missouri River  
6 Mainstem Systems Operation  
7  
8  
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10  
11 TRANSCRIPT OF  
12 PUBLIC HEARING  
13  
14  
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17  
18 Taken At  
19 Four Bears Community Center  
20 New Town, North Dakota  
21 October 24, 2001  
22

23 BEFORE COL. DAVID A. FASTABEND  
24 NORTHWESTERN DIVISION COMMANDER  
25



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1           (The proceedings herein were had and made  
2 of record, commencing at 7:10 p.m., Wednesday,  
3 October 24, 2001, as follows:)

4           (Videotape played and introduction given  
5 by Col. Fastabend.)

6           COL. FASTABEND: I'll now call the names  
7 of those who submitted cards beginning with  
8 Chairman Tex Hall.

9           MR. HALL: Once again, thank you, Colonel  
10 Fastabend. Before I begin my comments, I would  
11 like to call on one of our spiritual leaders, one  
12 of our elders in our community of the Mandan,  
13 Hidatsa and Arikara Nation, Ted Balman, Jr., to do  
14 an opening prayer. When we talk about the river,  
15 we talk about our Grandfather, we also talk about  
16 our ancestors, and we will show in the power point  
17 presentation the devastation of the flood of the  
18 Garrison Dam 50 years ago and how our Tribe has  
19 come from then to where we're at today. And then  
20 after that I would like to call on the councilman  
21 from Four Bears, Marcus Wells, Jr., to give a  
22 welcome.

23           So with that I would call on Ted Balman,  
24 Jr., to do an opening prayer and then to talk about  
25 our Grandfather, the Missouri River.

1                   (Prayer given.)

2                   MR. HALL: Next, I would call on Marcus  
3 Wells, Jr.

4                   MR. WELLS: Good evening. My name is  
5 Marcus Wells, Jr. I am a Four Bears council  
6 representative, tribal business councilman. I  
7 would like to welcome you here tonight and make one  
8 short comment about this session and recordkeeping,  
9 I guess, is that I hope that we can get back on the  
10 table to get back those individual landowners from  
11 the allotted landowners of the Tribe. What comes  
12 to them in '92 was taken back almost overnight with  
13 the Earthquake Bill. And I know a family out here  
14 in Four Bears who are still living who were happy  
15 one day and sad the next day because of the  
16 McKenzie Bay area, they had land again promised to  
17 them, given back, which was taken away. So  
18 hopefully one day that can happen. I know there's  
19 powers that be that have a lot to do with that, but  
20 as a councilman I would like to speak on their  
21 behalf. I don't see them here tonight, but it's  
22 the Smith family.

23                   In addition to that, what I would like to  
24 say on behalf of the elders who are here is that  
25 they suffered at one point in time and didn't

1 receive as much attention as the pallid sturgeon  
2 does today. I was reading the handout here  
3 tonight. There's a lot of issues that they want to  
4 make right with the wildlife and different things,  
5 but when it was time for us to move 50-some odd  
6 years ago, we had to move. I would like to say  
7 that. Thank you, Chairman Hall, for giving me a  
8 few minutes this evening.

9           MR. HALL: I would like to introduce a  
10 couple of my staff people, Colonel, members of the  
11 Corps. Richard Mayer will give the brief power  
12 point presentation. I recognize our Master Manual  
13 team. We have a Master Manual team. If you would  
14 please stand and I will recognize you. Elgin Crows  
15 Breast, Pemina Yellow Bird, Linda Emery, John  
16 Danks. Who else? And we have Patti Jo Thomas and  
17 Ed Hall. Our Tribal Missouri River Master Manual  
18 team formulated our comments and put together our  
19 presentation.

20           So with that I will call on Richard Mayer  
21 to begin our power point. I will submit a copy for  
22 the record, my comments. I think I have some extra  
23 ones here. I'm trying not to waste paper so I will  
24 pass those out. Our tribal attorney, Mr. Dan  
25 Israel, has flown in from Phoenix, Arizona, and

1 will also provide comments.

2           With that, Rich, we'll begin. For the  
3 record, my name is Red Point. Spell that correctly  
4 for the record. It's my Indian name. My English  
5 name is Tex Hall, chairman of the Mandan, Hidatsa  
6 and Arikara Nation.

7           As you can see from our logo, we have been  
8 established by federal treaty in 1851, so with our  
9 tribes we are a sovereign tribal government. And  
10 as I mentioned earlier, Colonel Fastabend, tribes  
11 are in our country, in the United States, the only  
12 country in the world that has three systems of  
13 government: The federal government, which you  
14 represent; the state government, which Governor  
15 Hoeven represented yesterday; and tribal  
16 government, which we are representing today. So  
17 it's a very unique democratic system with a  
18 three-tiered federal system that we speak on behalf  
19 of our nation tonight.

20           So with that, Richard, you can take on the  
21 next slide.

22           We were established by treaty in 1851.  
23 You can see that we covered many states, and we're  
24 down into -- all the way from the present location  
25 up towards the top, which we border on, we go past

1 the Knife River in Beulah and Hazen and over to the  
2 Missouri, down to the Heart south of Bismarck and  
3 Mandan, and then down into South Dakota to the edge  
4 of the Black Hills, up along the Powder River in  
5 Wyoming and over to the Yellowstone in Montana and  
6 then back up north to our present-day Fort Berthold  
7 Indian Reservation. So we went from 12 and a half  
8 million acres set aside and later become four  
9 separate states into our present day. You can see  
10 on the bottom, the 1910 Homestead Act sold surplus  
11 reservation land to the Indian homesteaders and  
12 further emaciated the Tribe's total acreage, so  
13 today we are on the Indian reservation. So, Rich,  
14 go on to the next slide.

15           You can see from this picture, this  
16 picture really represents trauma and dramatic grief  
17 that happened in 1948. We are probably the only  
18 tribe in this country that was completely  
19 devastated by one of these mainstem dams. The six  
20 dams along Fort Peck all the way down to Gavins  
21 Point where the Garrison Dam impacted the Three  
22 Affiliated Tribes.

23           Our chairman at that time, George  
24 Gillette, vice chairman, was my grandfather, Jim  
25 Hall, in the background and the rest of the tribal

1 council and you have a representative from the Army  
2 Corps of Engineers to the left and one from the  
3 Department of the Interior that signed the bill  
4 that forced the dam upon our Tribe and completely  
5 devastated not just a few -- not just a few farms,  
6 an entire capital of Elbow Woods with all the  
7 infrastructure, including the hospital, all the  
8 economic development projects, a comprehensive  
9 boarding school, all of the housing, all the water  
10 and sewer, a complete capital and, further, 156,000  
11 acres of an entire bottomland in class I and class  
12 II soil.

13           So, again, Colonel Fastabend, you will not  
14 find another Tribe that had complete devastation as  
15 the Three Affiliated Tribes in the Mandan, Hidatsa  
16 and Arikara Nation. This picture has been used by  
17 sociologists and professors that talk about the  
18 negative relationship that the United States  
19 Government has had with Indian tribes, and this is  
20 the position that we have come from.

21           The next slide, Richard. Here you have  
22 one of our tribal elders in 1946, Mr. Thomas  
23 Spotted Wolf, who said to the Corps when the Tribe  
24 was trying to negotiate with the Corps at that time  
25 when the Tribe was trying to say we have a

1 resolution. The resolution says we don't want the  
2 dam here. Research has shown that the dam could  
3 have been placed somewhere else and had less  
4 detrimental impact.

5           Imagine if we could have done an  
6 environmental assessment at that point in time in  
7 1948 what it would show. Rather than negotiate  
8 with the tribes, it was forced, the dam was forced,  
9 and as a result this famous quote, You have come to  
10 destroy us. When the negotiations ceased,  
11 negotiations did not continue, he pointed his  
12 finger at a representative from the Army Corps of  
13 Engineers and stated very eloquently in his own  
14 way.

15           Next slide. This is a picture of our  
16 capital, Elbow Woods, as the waters were coming up  
17 in 1952. In 1953 all the people were forced to  
18 relocate, and at that point in time, as Councilman  
19 Wells indicated, the families, the tribes still had  
20 a resolution opposing it and the Corps was moving  
21 towards this relocation, this forced relocation,  
22 and it was one of the worst relocation methods that  
23 the United States Government had bestowed upon  
24 anybody because there really was no relocation  
25 plan, it was forced removal, get out, the water is

1 coming, it's 1953, get on your tractor, get on the  
2 move, find a house, relocate, find a new homestead,  
3 find a new log cabin, find a new place to live or  
4 you will drown.

5           Next slide, please. This is the -- this  
6 picture is of the Four Bears Bridge. I also want  
7 to note for the record that Ed Hall is the project  
8 manager for our new Four Bears Bridge, and so he  
9 will make comments later on, Colonel Fastabend,  
10 about the possible impact and expense of putting  
11 the bridge together, that if the lake levels are  
12 lower, it will be cheaper to build the bridge.

13           But the old bridge which you see there,  
14 the middle span is right here, and this is in  
15 1952. This bridge was designed in 1934. It was  
16 built 22 feet in width. It was built for Model As  
17 and Model Ts. We have had that since 1934. Lo and  
18 behold, sometimes Congress works in mysterious ways  
19 and the United States Government works in  
20 mysterious ways, we got the funding to do that. So  
21 this is a very historic bridge. You can see the  
22 beautiful bottomlands in Elbow Woods right there.  
23 The bridge is close to Elbow Woods. You can see  
24 all the cottonwood trees. We call the bridge today  
25 a bridge without a home because the Army Corps of

1 Engineers is playing horseshoe on the bridge when  
2 we're trying to get new money, so we had to go  
3 directly to Congress. The Army Corps said we're  
4 not in the business of building bridges anymore.  
5 We did it in 1934. We dismantled it in 1953, but  
6 we're not in the business of building bridges, you  
7 have to go on your own, so we did.

8           Next slide, please. Colonel Fastabend,  
9 representatives of the Corps, this is the midwest,  
10 we like to see as the Great Plains region of  
11 tribes, and there are 16 tribes that are along the  
12 river or close to the river in North Dakota, South  
13 Dakota and Nebraska, and we work in a very cohesive  
14 manner. The tribes are all unified in making sure  
15 that the Master Manual reflects tribal concerns,  
16 and we will get into those comments more  
17 specifically later on.

18           The next slide, please. This is a map of  
19 North Dakota and South Dakota. There is one thing  
20 I want to point out for the record, Colonel  
21 Fastabend, and that's with the Mandan, Hidatsa and  
22 Arikara Nation. When Lewis and Clark came up the  
23 river 200 years ago approximately, in 1804,  
24 President Jefferson said in 1803, Captain Lewis,  
25 your mission is to find a passageway to the

1 Northwest through this area that the Mandan,  
2 Hidatsa and Arikara villages occupied. He said  
3 that because we had a huge trade network that was  
4 right here on the Knife River Indian Village just  
5 south of our present location, approximately 17  
6 miles to the south. You literally had a city on  
7 the prairie. There were hundreds of tribes. Our  
8 tribes were early traders on the river. We had  
9 flint, so we used that for weapons and tools. We  
10 traded that flint. You could find pottery from  
11 Mexico to the Southwest. Our trade network went  
12 out to the Pacific Northwest, all the way out to  
13 the Hudson Bay. So our tribes were here literally  
14 thousands of years before either North Dakota or  
15 South Dakota became states in 1889. And so,  
16 clearly, the uniqueness of the United States  
17 Congress and Government, these lands that you see  
18 before you are lands that are under the complete  
19 jurisdiction and sovereignty of these sovereign  
20 tribes that you see listed here.

21           But my final point on this map is that the  
22 Mandan, Hidatsa and Arikara Nation went down into  
23 South Dakota and down into Nebraska. So when we  
24 talk about the 1999 Water Resources Development  
25 Act, specifically Title VI of that Act, there are

1 over 3,000 sites down into South Dakota and some in  
2 Nebraska, but into South Dakota. Many members of  
3 the Army Corps of Engineers do not know that the  
4 Tribe has 3,000 known sites down there and that we  
5 are looking to preserve these cultural and sacred  
6 sites, and the Cultural Resource Protection Office  
7 is most assuredly working on this issue. So our  
8 tribes are clearly much further down in this area.

9           Next slide, please. And here you have the  
10 map of North Dakota and you have the four  
11 reservations, which include the Fort Berthold, the  
12 Turtle Mountain towards the top, the Turtle  
13 Mountain Band of Chippewa, the Spirit Lake Sioux  
14 Nation around Devils Lake and the Standing Rock  
15 Sioux Nation down south of Bismarck there, and over  
16 to the far right we have the Sisseton Wahpeton, so  
17 they come into North Dakota just a little bit, as  
18 well.

19           So we thank the Corps for the meeting that  
20 they held with Rose and Rick. We held a meeting in  
21 Bismarck at the Civic Center. We thank the Corps  
22 for having a preliminary meeting to address the  
23 Tribe's concerns at that time, also. We really  
24 appreciate that meeting in terms of talking about  
25 the Master Manual, talking about the impact of the

1 tribes. It really helped us as we are preparing  
2 our comments today. So we thank the Army Corps of  
3 Engineers particularly for helping us do that.

4           Next slide, please. Right here, and  
5 correct me if I'm wrong, this is a map of all of  
6 the known -- this is the land description. Green  
7 is the Corps of Engineers' land and the brown is  
8 the tribal land. And let me say this for the  
9 record, Colonel Fastabend, that the Tribe, as  
10 Marcus Wells, Jr., indicated his concerns about  
11 leaving lakeshore lands. The Tribe is submitting  
12 legislation to Senator Kent Conrad for the return  
13 of lakeshore lands that most assuredly the Corps  
14 has held as excess property. When they flooded us  
15 50 years ago, they took too much land, this is  
16 excess property. Other particular tribes and other  
17 states have received lands. Specifically South  
18 Dakota has received 92,000 acres. The Lower Brule  
19 and Sheyenne River Sioux Tribe have received  
20 hundreds of acres, as well.

21           We had our legislation in 1992 and their  
22 legislation happened in 1999, they're getting their  
23 lakeshore back and we are not getting our lakeshore  
24 back. So we have been urging the Army Corps of  
25 Engineers to do an administrative transfer, it is

1 not occurring, so we have to look to legislation to  
2 get that accomplished. But as you can see,  
3 Garrison impacted Fort Berthold right in the  
4 middle, right in the middle and heart of our  
5 reservation and flooded 556,000 acres.

6           Next slide, please. This is just a  
7 closeup of the northern part of the reservation.  
8 And there are a lot of recreation sites, and we  
9 will work towards trying to meet all concerns and  
10 we are looking for the Corps to favorably approve  
11 of the land transfer back to the Three Affiliated  
12 Tribes.

13           Next slide, please. This is a map of the  
14 Four Bears Park area. The reason I mention this  
15 slide is because back about approximately ten years  
16 ago the Tribe received these lands of Four Bears  
17 through the administrative transfer process. And I  
18 might also add this slide does not show the issue  
19 there was land given back to the Three Affiliated  
20 Tribes by the Army Corps of Engineers through the  
21 administrative land process, which they do not do  
22 for the rest of the lakeshore. So today we're  
23 forced to look back to legislation.

24           Next slide. On this particular slide  
25 we're showing this is Crows Fly Butte. This is a

1 real significant butte right over here to the  
2 west. You can see the erosion. The erosion that  
3 is cutting away this very significant Crows Fly  
4 Butte. It was named after one of our chiefs, Chief  
5 Crows Fly. And Chief Crows Fly lived back in the  
6 1800s and resisted the reservation life and led a  
7 lot of the people of the Hidatsa away to Fort Union  
8 and across the Yellowstone and hunted the buffalo.  
9 They refused the reservation life. Clearly we feel  
10 this is one -- this is a butte that is worth  
11 preserving. We want to preserve the very  
12 significant butte. You can see where the erosion  
13 needs bank stabilization. We need funding to do  
14 that. This is another shot of this. Again, if we  
15 don't put appropriate bank stabilization, we will  
16 lose this very significant butte.

17           Next slide, please. Right here, this is  
18 over on the eastern segment of Fort Berthold. You  
19 can see this is a rock formation. This was used  
20 for the tribes, back then used and they still use  
21 it today. Everything is passed down through world  
22 history. This is probably the sundance area or a  
23 spiritual ceremony. These would probably be in a  
24 circular formation used for spiritual purposes.  
25 They were used for prayer, they were used for

1 fasting and all of those things. And, again, these  
2 are left unprotected and we're very concerned that  
3 the Corps needs to protect these. Or what we would  
4 like is the Corps to contract with the Tribe for us  
5 to manage them.

6           We're very proud of our Cultural  
7 Protection Office. We're very proud of our Game  
8 and Fish Office. We're a sophisticated tribe. We  
9 take pride in the fact that 50 years ago we  
10 demonstrated we're very strong and our population  
11 is very strong. The smallpox in 1837 killed our  
12 Chief Four Bears. But we have our language,  
13 Mandan, Hidatsa, Arikara in our curriculum, we have  
14 our elders organization. John Danks here is a  
15 member of the elders organization. And the elders  
16 organization is taking a very active role in taking  
17 the lead for traditions, for language and  
18 preservation. I'm very proud of that fact our  
19 Tribe has the sophistication to protect these sites  
20 if we're given the opportunity. We also have -- I  
21 see Paul Danks back there. We have Richard Mayer  
22 who put together this slide, so we can track these  
23 areas that we need to safeguard, we can take care  
24 of.

25           Next slide, please. This is another

1 example on the eastern side of our reservation of  
2 again a droppage in the lake where we have somebody  
3 that's walking around looking at the erosion. You  
4 can see that, again, bank stabilization. We feel  
5 we're very short-funded in not only bank  
6 stabilization, but also the protection of our  
7 cultural sites and of our historical sites.

8           Next slide, please. I believe this is the  
9 last one, the last slide. Again, this is Fort  
10 Berthold, and these are approximately 700 single  
11 sites that you see. We have got more sites down in  
12 South Dakota, but these are 700 of our known sites  
13 that we have. There's over 3,000 sites here.  
14 There's over 3,000 sites here on Fort Berthold.  
15 These are 700 that are categorized right here. And  
16 you can see the impact, as I mentioned in my  
17 opening comments, the devastation of the Garrison  
18 Dam was the worst at Fort Berthold of any Indian  
19 reservation in the United States. And so most  
20 definitely these sacred sites are at risk. They  
21 are at risk with the advent of the Lewis and Clark  
22 bicentennial where they project 30 million visitors  
23 to come from St. Louis, we feel many are going to  
24 stop here because Sakakawea was here, she was a  
25 member of the Hidatsa Tribe, and people will want

1 to stop and see these things. But we're concerned  
2 about possible looting because it is occurring  
3 today, Colonel. There is looting occurring today,  
4 and, again, we want to look to co-manage these  
5 issues. Rather than sit here and point fingers at  
6 the Corps or the Corps can point fingers at the  
7 Tribe, we want to work in a partnership to help  
8 co-manage today so that tomorrow these known sites  
9 will be protected in perpetuity.

10           So that is the end of our slides. Thank  
11 you very much, Richard, for that.

12           Then I have my comments right here and  
13 I'll just read them for the record. I'll be as  
14 quick as I can.

15           On behalf of the people of the Mandan,  
16 Hidatsa and Arikara Nation, I welcome the Army  
17 Corps of Engineers to our homelands. The Three  
18 Affiliated Tribes was established in 1851 by the  
19 Fort Laramie Treaty. According to our Constitution  
20 and the United States Government, treaties are the  
21 supreme law of the land and we as a treaty tribe  
22 are considered sovereign nations. As chairman of a  
23 sovereign nation, I welcome this opportunity to  
24 provide comments on the draft environmental impact  
25 statement for the Master Manual for control of the

1 Missouri River. We will be providing very detailed  
2 comments on the draft environmental impact  
3 statement prior to February 28, 2002, the deadline  
4 for receiving comments.

5           Tonight I would like to comment on several  
6 concerns that tribes have and how the Master Manual  
7 will impact these concerns. In particular, I want  
8 to stress that the river is a trust asset and the  
9 Army Corps of Engineers as a federal agency is a  
10 trustee. We need joint management of the river.  
11 The Mandan, Hidatsa and Arikara Nation is prepared  
12 to work cooperatively with the Army Corps of  
13 Engineers on management of the river and on the  
14 following subject matters.

15           1. Government-to-government  
16 consultation. This is absolutely essential.  
17 Consultation with tribal nations, according to  
18 Presidential Executive Order 13175, is vital to  
19 development of the Master Manual. Prior to the  
20 finalization of the Master Manual, all tribal  
21 nations along the river should be provided with  
22 in-depth consultation about how the final Master  
23 Manual will be constructed. The Mandan, Hidatsa  
24 and Arikara people particularly have been adversely  
25 affected by the activities of the Army Corps in the

1 past. Our reservation, our homelands were  
2 displaced by the building of the Garrison Dam.

3           2. Recognition of the Winters Doctrine,  
4 which has reserved water rights for the Tribes from  
5 the river. Our reserved water rights under the  
6 Winters Doctrine must be acknowledged. The final  
7 EIS must recognize this before the Master Manual is  
8 finished. In recognition of this doctrine, the MHA  
9 Nation is ready to act collaboratively with the  
10 Army Corps on how the river, specifically our water  
11 rights, are to be managed.

12           3. Protection of economic activity along  
13 the river. The draft EIS must consider the effects  
14 of the various alternative flow schedules on the  
15 economic well-being of the MHA Nation; for example,  
16 how the water levels will impact the various  
17 economic development plans we have for the Four  
18 Bears Casino and Lodge and other tribal  
19 businesses. Remember, tribes, as well as states  
20 and private enterprises, have economic interests in  
21 the flow of the river.

22           4. Indian trust assets. The United  
23 States has a trust responsibility to protect and  
24 maintain rights reserved by or granted to American  
25 Indian tribes or individuals. When an Indian trust

1 asset has been impacted by a federal project such  
2 as trust lands, mineral rights, cultural resources,  
3 water rights, or hunting and fishing rights, then  
4 the federal agency in its action document must  
5 analyze those interests, the adverse impacts, and  
6 set forth appropriate mitigation and/or  
7 compensation commitments. We are ready to work  
8 again collaboratively with the Army Corps of  
9 Engineers to mitigate the following:

10           Lake levels at Sakakawea and Oahe have  
11 dropped up to 12 feet, particularly in response to  
12 low precipitation in the Missouri Basin over the  
13 last several years. This substantial drop has also  
14 been caused by the disproportionate role given by  
15 the Corps to navigation in the lower Missouri  
16 River.

17           The dropping of the lake levels deprives  
18 the tribes and their members and nonIndian business  
19 partners of the tribes full and unconditional  
20 access to these important reservoirs.

21           The lake dropping also creates a  
22 substantial scar to the land and waters and takes  
23 away from the ongoing efforts of tribes to enhance  
24 our recreation opportunities, to protect historic  
25 cultural properties, and to restore endangered

1 fish, native fish and aquatic and terrestrial  
2 habitat.

3           5. Environmental justice claims.

4 Environmental justice issues evolve out of  
5 Executive Order 12898 dated February 11, 1994. The  
6 order provides that a federal agency shall make  
7 achieving environmental justice part of its mission  
8 by identifying and addressing as appropriate  
9 disproportionately high and adverse human health  
10 and environmental effects of its programs.  
11 Environmental justice includes any adverse effect  
12 on minority and low-income populations. In the  
13 Missouri River, as Congress expends millions of  
14 dollars to recover endangered species, restore  
15 native fish, aquatic and terrestrial habitat,  
16 cultural resources and river economies,  
17 environmental justice requires a review of the  
18 availability of those federal benefits to minority  
19 and low-income households and appropriate  
20 follow-through commitments.

21           When the Garrison Dam was constructed by  
22 the Corps, we were relocated from the rich, fertile  
23 agricultural bottomlands to grasslands not suited  
24 for our agricultural traditions.

25           Lake Sakakawea created by the Garrison Dam

1 is a long lake and has virtually eliminated  
2 meandering of the upper Missouri River, as well as  
3 the flood lands, wetlands, and fish and game  
4 central to the Tribe's way of life. In their place  
5 has emerged over time noxious weeds that are  
6 endemic to the reservoir area.

7           The lands adjacent to the reservoir are  
8 barren and have very few of the wetland  
9 characteristics that existed prior to the  
10 construction of the Garrison Dam.

11           6. United States Constitution and Equal  
12 Protection Clause. The Draft Master Manual EIS  
13 fails to adequately set forth the Indian trust  
14 assets and environmental justice concerns of the  
15 Three Affiliated Tribes. Moreover, to the extent  
16 that the Master Manual draft EIS relies upon tribal  
17 input and tribal documentation as set forth in  
18 Volume II, it violates the equal protection clause  
19 of the U.S. Constitution. Specifically, the Corps  
20 has elected to expend its funds to describe  
21 fisheries, flows, navigation, power and other  
22 socioeconomic concerns and included them in Volume  
23 I of the draft. But when it comes to setting forth  
24 the tribal concerns relating to the Indian trust  
25 assets and environmental justice, the Corps,

1 notwithstanding repeated requests from the Tribes,  
2 has relied upon the Tribes, themselves, to provide  
3 the documentation. Because there is no rational  
4 basis for this distinction, the Corps is violating  
5 the equal protection clause of the United States  
6 Constitution.

7           To correct this constitutional deficiency  
8 and to comply with the contemporary Council on  
9 Environmental Quality requirements, the Corps in  
10 its final EIS should at its expense specifically  
11 address Indian trust assets and environmental  
12 justice concerns for those tribes whose  
13 reservations have been adversely affected by the  
14 Missouri River operations.

15           And, finally, 7. Protection of cultural  
16 sites. Changing the flows along the river under  
17 several of the preferred alternatives presented by  
18 the Army Corps following the issuance of the  
19 Biological Opinion will most likely create  
20 additional erosion along the shores of the upper  
21 three reservoirs. These reservoirs are projected  
22 to be the reservoirs that will provide the flow  
23 necessary to implement the preservation of economic  
24 activities along the river and to provide  
25 protection of endangered species. The analysis of

1 these changes must include complete studies of how  
2 they will affect our cultural sites along the  
3 river. And I would like to put in that study,  
4 because in Bismarck there was discussion -- I think  
5 it was just -- what was that discussion about the  
6 wave lap. The wave lap along the bank was the  
7 formula that was used for cultural protection, and  
8 we feel there are many other areas with more  
9 in-depth formulas that should be adopted for this.  
10 The analysis of these changes must include complete  
11 studies of how they will affect our cultural sites  
12 along the river and how any damage to our sites  
13 will be mitigated or prevented altogether. Under  
14 the Native American Graves Protection and  
15 Repatriation Act, to allow such sites to be eroded  
16 away or left unprotected is unacceptable.  
17 Protection of these sites (the vast majority of  
18 which are associated with the Mandan, Hidatsa and  
19 Arikara) needs to be the subject of lengthy review  
20 within the Master Manual.

21           Substantial government-to-government  
22 consultation should be referenced not just for  
23 cultural site protection, but for all phases of the  
24 Master Manual, itself.

25           And one final comment, as well, Colonel.

1 Some of the ranchers that could not be here today  
2 indicated to me that when the lake levels drop --  
3 when the lake levels drop, it tears all the fencing  
4 away. To keep their cattle from going into the  
5 river, they have to fence off, the water goes up,  
6 drops the lake levels, rips all the fences down.  
7 Not only do noxious weed comes in, but the cattle  
8 go into the river and go through bogs and many  
9 times -- one rancher told me he lost seven head of  
10 cattle, another one told me he lost four head of  
11 cattle, went through the bottom. And one of the  
12 ranchers mentioned somewhere in South Dakota  
13 there's a tribe that the Army Corps of Engineers  
14 had looked to getting some funding for refencing  
15 when the lake levels go back and forth in order to  
16 put up new fence.

17           That's what some of the representatives of  
18 the Corps did with the tribe down there. So I ask  
19 that more as a request than a comment, that if that  
20 is the case, that the Three Affiliated be included  
21 in something like that because as you can see on  
22 the map, the lake is right in the middle, so we  
23 have fencing on both sides, top side, bottom side  
24 and all directions. We also have over a hundred  
25 range units and agriculture is a primary economic

1 base for our Tribe.

2           So with that I want to thank you for again  
3 -- I want to recognize Colonel Fastabend. He is  
4 the highest ranking official in the Army Corps of  
5 Engineers, second person. General Strock who was  
6 at Fort Berthold, he was here, General Strock was  
7 at Fort Berthold, but it didn't take you very long  
8 to be here. We very much appreciate your  
9 presence. Colonel, we are very honored to have you  
10 in our presence and all your complete staff to work  
11 with us.

12           COL. FASTABEND: Thank you, Chairman  
13 Hall.

14           Marcus Wells, do you want to make another  
15 statement, or was your earlier statement all you  
16 needed? Mr. Crows Breast.

17           MR. CROWS BREAST: Good evening. My name  
18 is Elgin Crows Breast. The reason I did that, the  
19 reason I shook your hand, is I welcome you here.  
20 It's quite ironic 55 years ago, my  
21 great-grandfather stood before the Army Corps of  
22 Engineers and said this. I stand before you  
23 today. Instead of saying destroy, you have come to  
24 help us, all our issues, all the things we stand  
25 for as Indian people.

1           I recall my Grandma many years ago said,  
2 come here, Son, come with me, go for a ride. We  
3 went on this flat, the water was backing up, you  
4 could see it coming, just barely moving. She  
5 looked at the water, she started crying. That's  
6 many memories she had down there on the water just  
7 like a lot of our elders, a lot of what went on  
8 before us.

9           The social and economic impacts of our  
10 Tribe were devastated, not to mention our cultural  
11 sites. Us tribes, no matter where we're at, we  
12 understand the natural process of the water when it  
13 comes to Indian ceremonies. We understand that  
14 water. We know what that water is about. We know  
15 what that water can do. And we know we have to  
16 have respect for that water. I've seen in my time  
17 ceremonies where older men, older women were  
18 indoctrinated in the Indian way with that water.

19           We find all of the scientific technology.  
20 I've seen the rains come and some of our elders  
21 stand there and split those storms. I've seen  
22 those. So we know that the water is something,  
23 it's a spirit that moves. It's got its own mind.  
24 You can't stop it. It's going to go wherever it  
25 wants to go is what I have been told.

1           Today we talk about that water. There's  
2 many issues in that water. There's water rights.  
3 There's irrigation. There's quantification. And  
4 in the future way 50 years from now when our Tribe  
5 multiplies by maybe 20, 30 thousand and most of us  
6 will be gone, that water is still going to be  
7 there.

8           I don't expect you to understand what I'm  
9 saying when it comes to the Tribes, Indian people,  
10 but all we know is that water is life. From that  
11 water grows a lot of things. My friend, this man  
12 over here from Western Area Power Administration,  
13 in an annual year the dams make almost \$700  
14 million. That water flows through that land, that  
15 flows through our land, it goes through that dam  
16 and it turns those wheels to make that electricity,  
17 and that water, when you sell that electricity, it  
18 makes money. We have seen a small portion.

19           I was on the first council, the seven-man  
20 council in 1986-88, when we left our home to attend  
21 that meeting of committee affairs in Washington,  
22 D.C. We videotaped it. At that time the  
23 recommendations for our Tribe they said was \$612  
24 million, is what they justified for our Tribes.  
25 Through the years they whittled down to 149.2.

1 \$612 million is not enough to pay for what my  
2 Grandma felt in here as she looked over that water  
3 and seen her home go under and all the ancestors  
4 whose blood and bones are all over the area.

5           So at this time, Colonel, I would ask you  
6 as a member, as one of the former leaders of our  
7 Tribe, to dig deep inside your heart and find a way  
8 to help our people economically, socially,  
9 culturally, legally, environmentally. Help us. We  
10 have lost a lot. And we're barely making it back.  
11 I want to say thank you and I'll close here. Thank  
12 you very much.

13           COL. FASTABEND: Thank you, Mr. Crows  
14 Breast.

15           MR. MOORE: John Danks.

16           MR. DANKS: Good evening. My name is John  
17 Danks. I'm a member of the Three Tribes. I'm a  
18 member of the elders organization and I was  
19 privileged to provide testimony to Senator Conrad  
20 about three weeks ago and now I want to repeat some  
21 of it here tonight for you.

22           The elders are very interested in getting  
23 the excess lands along Lake Sakakawea returned to  
24 them. We made that comment to Senator Conrad.

25           The elders are very interested in getting

1 free power from Lake Sakakawea. There is a program  
2 where we can get reduced rates for power generated  
3 by the lake, but that program was never put in  
4 place for the tribal reservation. That program was  
5 put in place for municipalities and cities along  
6 throughout the area.

7           When you're looking at the map that our  
8 chairman so ably presented to you, you see that  
9 this is the only reservation that has given its  
10 heart for flood control somewhere further south.  
11 We have given our absolute heart. And if you look  
12 at the research and the testimony, they refer to  
13 that research and that land as our economic engine,  
14 and we lost our economic engine.

15           I wonder, have you calculated the acres of  
16 class I and II land that the Corps flooded to  
17 achieve flood control? I heard you talking about  
18 millions and millions of acres of land you're  
19 trying to keep from flooding today. How many acres  
20 of land did you flood to build the dams? And I  
21 would like to echo the chairman's comment, had  
22 there been an environmental impact requirement way  
23 back then, maybe there wouldn't be a lake here  
24 today. I'm here to make those comments as an  
25 observation.

1           When the lake took our bottomland, it took  
2 large amounts of our coal deposits, it took all of  
3 our timber that we used for fire and for heat, and  
4 the free power would be a method to replace that.

5           The other observation we have as elders is  
6 the lake has fluctuated too greatly. It's so high  
7 one year and the next year it's way down. We would  
8 like to see a little more stabilization.

9           I thank you for giving me this opportunity  
10 to speak to you tonight. Thank you.

11           COL. FASTABEND: Thank you, Mr. Danks.

12           MR. MOORE: Pemina Yellow Bird.

13           MS. YELLOW BIRD: Good evening. My name  
14 is Pemina Yellow Bird. I'm an enrolled member here  
15 at Three Affiliated Tribes and I work for my Tribe  
16 to protect and preserve our sacred and cultural  
17 sites, as well.

18           And about all I can add to all of the  
19 information you received so far is that since 1978  
20 the Omaha District has spent just under \$3 million  
21 for shoreline stabilization on lands within its  
22 district, yet every year almost \$150 million is  
23 earned in hydropower from Garrison Dam alone. And  
24 that seems to me a very great disparity. Lots of  
25 money is being made off the dam that flooded the

1 bottomland, but nothing is being spent -- almost  
2 nothing is being spent to preserve and protect our  
3 sacred and cultural sites.

4           Our elder that offered the prayer talked a  
5 little bit about how much water means to us and how  
6 our people lived always along the Missouri River.  
7 The evidence of that is in dozens and dozens of  
8 earth lodge village sites, hunting territories,  
9 ceremonial sites, all of which are critically  
10 necessary to the continuity and survival of our  
11 people as a nation.

12           You see because of this big reservoir we  
13 don't have any bottomlands left within our exterior  
14 boundaries. We have to leave our reservation to  
15 see bottomlands, to see our people's earth lodge  
16 villages. And even as we're speaking this evening,  
17 more and more of them have fallen into the water.

18           Our chairman has made a number of offers  
19 to go to Congress and assist in lobbying for  
20 increased funding for the shoreline stabilization,  
21 but there remains an unmet need for funding in the  
22 area of shoreline stabilization, and it has to be  
23 up to the Army Corps to take the initiative to ask  
24 for increased levels of funding so that our sites  
25 can be protected. And until that happens we're

1 just going to be hearing the same old responses.

2           The revised draft environmental impact  
3 statement is weakest in its analysis of the impacts  
4 to our sacred and cultural sites. The issue of our  
5 sites needs to be raised at a key issue level  
6 within the Master Manual process. They are worthy  
7 of the same kinds of investigation and  
8 consideration as the fish and the birds and the  
9 water and the hydropower. And we have been working  
10 very hard with the Army Corps to protect these  
11 sites, and now it's time for that issue to receive  
12 the kind of consideration that it deserves.

13           I say thanks to you and thanks for coming  
14 here to see us in our homelands.

15           COL. FASTABEND: Thank you, Miss Yellow  
16 Bird.

17           MR. MOORE: Bruce Engelhardt.

18           MR. ENGELHARDT: For the record, my name  
19 is Bruce Engelhardt. I'm with the State Water  
20 Commission. I'm here tonight representing Dale  
21 Frink, the state engineer.

22           Last night in Bismarck Governor Hoeven  
23 presented testimony describing North Dakota's  
24 position on the Master Manual review. Today I will  
25 briefly reiterate the same strong and clear message

1 that North Dakota and adjoining states have been  
2 voicing for years. The Missouri River Master  
3 Manual must be changed to meet the contemporary  
4 needs of the basin and the time for this change is  
5 far past due.

6           The five mainstem dams authorized by the  
7 Flood Control Act of 1944 were constructed in 18  
8 years. If the Master Manual revision is completed  
9 in 2003, it will have taken 14 years. This delay  
10 is unacceptable.

11           The Missouri River is of vital importance  
12 to the State of North Dakota for its various uses  
13 for hydropower, water supply, both for  
14 municipalities, rural people and industry.  
15 Irrigation, about 16 percent of the total land  
16 irrigated in North Dakota uses the Missouri River  
17 water. And for recreation, hundreds of thousands  
18 of residents of the state and visitors to the state  
19 recreate on the river, Lake Sakakawea and Lake  
20 Oahe.

21           The quality of the water in the Missouri  
22 River is also important to the state, both for  
23 municipal water supply and coldwater habitat. If  
24 the elevation of Lake Sakakawea falls below 1825  
25 during mid to late summer, the reduced oxygen

1 concentration puts the nationally acclaimed sports  
2 fishery of the big lake in serious jeopardy. Low  
3 lake levels also increase the risk to human health  
4 through the resuspension of sediment from the delta  
5 portions of the lake.

6           The cultural resources, as Chairman Hall  
7 mentioned, are also important to the state, as well  
8 as both the Three Affiliated Tribes and the  
9 Standing Rock Sioux Tribe. We feel they also  
10 further warrant the changes described in the  
11 alternatives in the Master Manual. Stable lake  
12 levels would result in fewer sites being impacted.

13           The draft EIS supports change by the  
14 benefits outlined in the five alternatives. They  
15 improve conditions for endangered species and  
16 conserve water in the mainstem reservoirs during  
17 times of drought. Unbalancing the reservoirs and  
18 increasing releases at Fort Peck may provide  
19 benefits for the pallid sturgeon, least tern and  
20 piping plover. Conserving water in the reservoirs  
21 during dry periods improves conditions for fish  
22 survival and thus recreation, and translates into  
23 more head for hydropower. If these alternatives  
24 would have been in place during the drought of the  
25 late 1980s, Lake Sakakawea would have been four to

1 six feet higher, translating into far better fish  
2 habitat, more efficient hydropower and an overall  
3 improvement in the economy of the areas that border  
4 the Missouri River.

5           The drought conservation measures included  
6 in the five new alternatives are essentially those  
7 agreed to by seven of the eight Missouri River  
8 Basin Association member states. Strictly from  
9 North Dakota's standpoint, they don't go far  
10 enough, but they are likely the most equitable  
11 means of distributing hardship during drought and  
12 for that reason are supported by seven of the eight  
13 states within the basin, including North Dakota.  
14 These drought conservation measures proposed by the  
15 Missouri River Basin Association should be  
16 implemented as soon as possible and will be a vast  
17 improvement over the 40-year-old Master Manual.

18           In conclusion, I urge the Corps to adhere  
19 to its current schedule for completing the Master  
20 Manual revision process. The time for equitable  
21 distribution of the benefits of the Missouri River  
22 and equitable sharing of water shortages is now.

23           There is no question that any of the five  
24 proposed alternatives is a marked improvement over  
25 the current water control plan. The results of the

1 economic and environmental studies clearly  
2 illustrate how the Missouri River and the  
3 reservoirs can be better managed to benefit  
4 everyone in the basin. If we manage them  
5 intelligently, realization of their potential can  
6 benefit all. On behalf of the people of North  
7 Dakota and the Missouri River Basin, it is time for  
8 a change on the Missouri River. Thank you,  
9 Colonel.

10 COL. FASTABEND: Thank you, Mr.  
11 Engelhardt.

12 MR. MOORE: Ed Hall.

13 MR. HALL: Thank you. My name is Edward  
14 Hall. I'm a member of the Tribe. And I would like  
15 to, first of all, make the comment on behalf of the  
16 Tribe and follow up on the comment the chairman  
17 made.

18 I know you have a very difficult task of  
19 balancing all of the interests in the dams, but we  
20 would like to ask you to consider one more. You  
21 know we're in the process of replacing the bridge  
22 across that you probably came across here, the  
23 narrow bridge, and you saw the picture of the  
24 original bridge that was moved up here.

25 We're working with the North Dakota State

1 Highway Department and consultant firms to replace  
2 that bridge with a new bridge. We have several  
3 design options that we're looking at and we hope  
4 that we can come up with the -- what you might call  
5 a bridge with some excellence to it that will add  
6 to our economy here in the future.

7           But one of the things to do that, we're  
8 always working with a tight budget. But in talking  
9 with the consultants, and so forth, it would  
10 probably save us quite a bit of money if we could  
11 somehow write a formula to balance the water level  
12 in the middle dam here so that during the  
13 construction season the water level is as low as  
14 possible. My understanding is that working with  
15 the footings, and so forth, in the deep water, the  
16 depth of that water increases the cost by quite a  
17 bit. And I think it would really be helpful. And  
18 I know somebody -- your engineers and your  
19 statisticians and mathematicians somehow with those  
20 gates, if they would look at it and see if they can  
21 somehow balance upstream or downstream or whatever,  
22 but try to keep the level of Garrison as low as  
23 possible through two construction seasons. We hope  
24 that construction will start in the spring of 2003  
25 and it will be completed in the fall of 2004.

1           So if that is possible, we would like to  
2 make that request. We know it's difficult, but if  
3 it's possible, it could save us a lot of money.  
4 And if we could have some plan that says, yes,  
5 that's possible when we go to bid, it will make a  
6 big difference in the bid price. But if the  
7 contractor has to bid that bridge without any  
8 assurance, he's going to bid the maximum. So that  
9 would be one request.

10           COL. FASTABEND: Mr. Hall, what's the time  
11 schedule for your bid process? Do you know that?

12           MR. HALL: Well, we hope to open bids the  
13 fall of 2002 so that construction can start the  
14 spring of 2003. So it would be late 2002 when the  
15 bids are opened.

16           The other request I have on the part of  
17 the Tribe is, I think if you see on the shoreline,  
18 we have approximately 600 miles of shoreline, and  
19 if you go back to the rest of the pictures you've  
20 looked at, and so forth, of our acres of land that  
21 we had from the treaty on down to where we're at  
22 today, you can see that it seems like every time we  
23 dealt with the federal government and Congress,  
24 that they took economic resources. The first one,  
25 they took us down from our land base, you can hold

1 it right there, we lost our land till they brought  
2 us down to this reservation here you see today. So  
3 everything they take from us is our economic base.

4           And if you look at the light area there up  
5 in the upper right-hand corner, that white area  
6 that's in the reservation boundary. When I was a  
7 kid, I grew up under the water down there south  
8 about in the middle of the reservation, and I  
9 always assumed that that area, that line there,  
10 that was our reservation boundary because that's  
11 where we had the red steel posts and barbed wire  
12 fence, and we always assumed that was our  
13 reservation boundary. It wasn't until later when  
14 one of our enrolled members became an attorney and  
15 researched this that he found that when they opened  
16 that white area up for homesteading, that they did  
17 not officially change our reservation boundary. So  
18 now we have a reservation boundary that goes up  
19 around that white area, but you know which creates  
20 a heck of a jurisdictional issue, and so forth.

21           But when we were down -- you can imagine,  
22 that's all farmland. That's the best farmland in  
23 the country there. So when they opened that up for  
24 homesteading, they took our economic base away from  
25 us again.

1           Now, the next step, when they took that  
2 fence down there along the homestead area, our  
3 economy -- we lived off the land, of course, but  
4 most of us had horses. We didn't run cattle. We  
5 had horses. But I can remember as a kid that fence  
6 there was along the farmland and the farmers  
7 complained to the Bureau of Indian Affairs that the  
8 Indian horses were getting into their fields along  
9 there. So an order came out you guys sell your  
10 horses, so we had horse roundups and we drove  
11 horses up there and sold horses. So we lost that  
12 economic base.

13           What I'm getting at, now we have 600 miles  
14 of shoreline. We're down to that now. That could  
15 be an economic base for us, and that's why it's so  
16 important that we get this shoreline back. But if  
17 we get it back, what do we do with it? We look at  
18 it as an economic resource for future economic  
19 development in tourism. If we get this bridge and  
20 we want to take advantage of future tourism, we  
21 have that 600 miles of shoreline, and if we can do  
22 a proper plan in development of it so that people  
23 want to come here and enjoy the shoreline, I think  
24 we can use it.

25           But I guess what we would ask is that the

1 Corps work with us, give us some technical  
2 assistance and work with us to develop our parks  
3 and recreation areas along that shoreline. We  
4 would like to make them the best recreation areas  
5 in the country. I think when you look at a  
6 regional scale, this is the best spot in the  
7 country. We would like to make it that. But we  
8 need to develop our parks and recreation areas so  
9 that we maintain them and we keep them nice for our  
10 future generations. We could use some help there.

11           The third item that I would like to make a  
12 request on is not from the Tribe, but it's from the  
13 Memorial Congregational Church here on the  
14 reservation located in Parshall.

15           One of the items that we haven't talked  
16 about much, hasn't come up, is when we were flooded  
17 out, we had to move our graveyards, we had to move  
18 our dead. And that is an item that really hasn't  
19 received much attention. But I know I'll give you  
20 one example. Down at the Elbow Woods there we had  
21 the Memorial Congregational Church, and that was  
22 the first church where Christianity was brought to  
23 the reservation, a church was built. So that's  
24 kind of a historic building. It was moved to what  
25 they call the deep water area. Okay. And the

1 cemeteries were moved. And that was quite another  
2 process where people had signed up and they said  
3 where they wanted their graves moved to, what  
4 cemetery. And as a young man, I worked for a  
5 contractor moving those graves. So I know a little  
6 bit about how they were moved and it wasn't all  
7 that good. But right now they moved them up there  
8 and a lot of the people that had their family  
9 buried there, they moved them there, but they  
10 couldn't move there to make a living, they had to  
11 move away. So what we have is a lot of graves  
12 there where the families that moved away and we  
13 don't have organized cemeteries like you have other  
14 places, so there's no way of maintaining those  
15 cemeteries. So that's quite a job.

16           But the thing that we're asking is that we  
17 have -- that's 500 feet off the Lewis and Clark  
18 Trail, and we want to do some history of the  
19 church, and so forth, and the church is writing  
20 their history so that they can use the income from  
21 their sale of the history book to maintain that  
22 church as a historical site.

23           But what the Corps did, they put little  
24 four-by-four concrete posts as foot markers for  
25 graves, and over the last 40-some years those have

1 deteriorated so now the names that were on little  
2 plates on there and they have been bumped off by  
3 lawn mowers or whatever or they have just rusted  
4 out, you can't read them, we would like to have  
5 these markers replaced with a permanent marker  
6 because there's going to be a time coming before  
7 too long nobody will know whose grave it is. And I  
8 think that they deserve some permanent markers.

9           The other thing is our fence. Instead of  
10 placing a new fence there, they moved the old  
11 fence, and those items I think should be replaced.  
12 And so on behalf of the church, I will submit  
13 further testimony, but we just wanted to make that  
14 an item. And I'm sure that once this graveyard --  
15 if we can get it done, I'm sure about fifteen other  
16 graveyards very similar on the reservation need the  
17 same thing. So thank you.

18           COL. FASTABEND: Thank you, Mr. Hall.

19           MR. MOORE: Ted Balman.

20           MR. BALMAN: Good evening, Colonel, your  
21 staff. Thank you for coming to this meeting here.  
22 I guess one of the things I want to mention, also  
23 apologize for, is the lack of Indian participation  
24 here, but I think that my brother, the chairman,  
25 has pretty much led with confidence in presenting

1 the very eloquent presentation here.

2 I point out in any society when people are  
3 in dire straits, get in a difficult situation, they  
4 come with arms and protest and whatnot, and I'm  
5 glad that we don't have a protest tonight, although  
6 I think that this issue is very important to the  
7 Indian people.

8 I'm one of the very few full-force  
9 Hidatsas on this reservation. Some of the Mandan I  
10 think that were full-force Mandan are no longer in  
11 existence today. We are pretty much a combination  
12 of the Three Affiliated Tribes today. I am also  
13 one of the very few that actually participated in  
14 dance in the old Sante Hall. I have experience in  
15 several people's moccasins. I grew up as a young  
16 person in the Lucky Mountain area, I moved to  
17 Mandaree. I walked the bottom of this great dam  
18 and experienced seeing all of the beauty there, and  
19 I can't -- words cannot actually express the beauty  
20 that was there, and this inclement weather, the  
21 weather was calm and sheltered, berries and  
22 whatnot, I guess a lot of this stuff has already  
23 been told. But my grandfather raised cattle and I  
24 remember him having four-year-old steers in the  
25 herd and he would butcher them as we needed them

1 and also share in the community and the gatherings  
2 and the powwows.

3           As I mentioned, we are very resilient  
4 people. We have acclimated to this way of life  
5 through all our difficulties. At a very young age  
6 I was sent to a boarding school, and I'm sure that  
7 you've heard the horror stories of a boarding  
8 school, and I tell you they are true. We were  
9 prohibited from speaking our own language, and  
10 somehow or other I have retained my first  
11 language. I am fluent in the Hidatsa language and  
12 able to communicate with some of the elders in our  
13 community. I have also traveled throughout the  
14 country and I've also experienced the mainstream  
15 and the working class of this blue collar work, and  
16 in my experience, I was number 484 of employment in  
17 the big bed dam. I was there when they poured the  
18 first cement bucket and was there at the last one,  
19 when they loaded out some of the last equipment on  
20 the rail. So I'm familiar with the dams and how  
21 they were built and how the turbines and everything  
22 works.

23           And I also have had the experience of  
24 serving two terms in the tribal business council.  
25 And this is not the only talk we've had with the

1 Corps of Engineers in regards to this taken area.  
2 I guess one of the real concerns in speaking  
3 tonight, a lot of issues haven't been covered, but  
4 I think one of the things is this shoreland. This  
5 shoreland is very important to our people. We talk  
6 about Indian self-determination, but one of the  
7 keys of Indian self-determination is going to be  
8 determined by this Corps land around the lake.

9           Like I mentioned before, I have been  
10 around the country, I have been down in Colorado,  
11 and into various parts, I've seen the structure  
12 that has developed around these dams, and I can see  
13 what would happen in the future for us. And you  
14 devastated us very much. And I fear this deeply  
15 for the future generations of this reservation.  
16 We've lived our life, we've done what we could, but  
17 we have future generations to think about, where  
18 they're going to grow up, if they're going to be  
19 able to stay home, make a living, and I guess this  
20 is where my brothers made comments before about the  
21 future generation, the future generation,  
22 education, economic development, and I guess also  
23 we'll get working with other people in tourism.

24           Even hunting and fishing have become an  
25 issue in jurisdiction and the control. You see

1 articles today in the paper, people up in arms  
2 because they can't come on the reservation and  
3 hunt. At the very same time, if I was to go to  
4 Sioux Falls, New York or wherever and step on  
5 somebody's lawn, what would they do to me? Keep  
6 off the grass, they'll fine me if I stepped on  
7 their lawn, but they seem very free to want to come  
8 and explore every little corner that we have on the  
9 reservation. And I think that needs to be somehow  
10 controlled and regulated so that they don't dig up  
11 our graves and look in our windows in our homes.  
12 And I've seen situations in South Dakota where it  
13 looked like the Continental Army walking across the  
14 field with shotguns in pheasant season, going  
15 across Corps land and adjacent to tribal land.

16           You know, some of these issues that are  
17 very near and dear to us need to be addressed and  
18 we need to work in cooperation. I think the Three  
19 Affiliated Tribes has demonstrated from almost the  
20 beginning of time where our heart is and where our  
21 cooperation is, how we have taken in the Lewis and  
22 Clark, but what do we get in return? You know,  
23 take a look at that. We're cooperating and being a  
24 good guy, they take your land away more and more  
25 and more. There should be enough of that now.

1           You look at some of this water  
2 development. The water from the Missouri running  
3 clear into Minnesota, clear into Wyoming this way,  
4 to the Black Hills, but yet people in the Three  
5 Affiliated Tribes are without water and have to  
6 haul water today to their homes.

7           I think there's a lot of these types of  
8 things that we need to take a look at and work in  
9 cooperation, and when we talk about Indian  
10 self-determination, has taught Indian self-  
11 determination and some of these tribes determined  
12 where they're going.

13           I haven't really had time to prepare a  
14 written statement, but I will put something  
15 together for you and send it to you on some of the  
16 items I have addressed tonight. And I hope that  
17 this is a unified, true effort in working together,  
18 not just, what you would say, something you have to  
19 do, one of the items that is on the agenda of part  
20 of a law we have to go by, we have to have a  
21 meeting so let's go have a meeting and forget about  
22 it later, whatever we say is forgotten. I hope  
23 that's not the case. Thank you very much.

24           COL. FASTABEND: Thank you, Mr. Balman.

25           MR. MOORE: Dick Messerly.

1           MR. MESSERLY: Thank you, Colonel. Dick  
2 Messerly, Garrison, North Dakota, the Garrison  
3 Chamber of Commerce.

4           The economic impact felt by Lake Sakakawea  
5 area communities, especially Garrison and New Town,  
6 goes with the level of the lake. If water levels  
7 are at a normal level, around 1840 feet mean sea  
8 level mark, then the economy of communities along  
9 the lake points to a substantial increase. When  
10 lake levels decline to a low point, economies show  
11 a drop in direct correlation to the lake level.

12           This correlation has been tracked by the  
13 Garrison Chamber of Commerce through collecting  
14 data on taxable sales, Lake Sakakawea elevations  
15 and visitations at Fort Stevenson State Park, a  
16 major state park on the north shore of Lake  
17 Sakakawea, just three miles south of Garrison.  
18 These figures are not estimates, but are hard  
19 facts.

20           In the low water year of 1991 when levels  
21 of Lake Sakakawea plunged to a low of 1815.5 feet  
22 mean sea level, the visitation at Fort Stevenson  
23 State Park also reached a low of 59,000. The  
24 taxable sales in Garrison were also cut to about  
25 \$7.5 million annually. In the year 1999 when water

1 levels were more normal with a summer operating  
2 season of 1840 feet mean sea level, sales were 9.7  
3 million and visitation at Fort Stevenson State Park  
4 was 124,000. This is over a \$2 million increase  
5 from the low water year of 1991 for the Garrison  
6 community. Similar taxable sales correlations can  
7 be seen in the New Town figures. In 1991 New Town  
8 had taxable sales of 2.6 million. In 1999 taxable  
9 sales were 4 million.

10           As annual Lake Sakakawea elevations have  
11 been tracked and compared to taxable sales in  
12 Garrison and New Town and to visitation at Fort  
13 Stevenson State Park, starting with the year 1978 a  
14 pattern of impact becomes graphically obvious. Low  
15 lake levels, below 1830 feet mean sea level, mean  
16 lower taxable sales and lower park visitation.  
17 These translate into a tremendous negative economic  
18 impact to this area. I included them on these  
19 charts and the testimony, but I just want to show  
20 you graphically how the charts do track lake  
21 elevations, and also in this case the park  
22 visitations are dramatic and rise and fall at the  
23 same rate. On this same chart we have tracked the  
24 Garrison taxable sales, as well as the lake levels  
25 and they dramatically show the same rise and falls

1 of the lake levels.

2           According to the most recent RDEIS  
3 summary, navigation under the best conditions  
4 generates about \$7 million annually. Under the  
5 five proposed alternatives to the current water  
6 control plan, navigation's benefit in a reduced  
7 flow year would be cut by about \$2 million. If we  
8 add up the losses in 1991, a \$3.5 million cut in  
9 taxable sales were the impacts on two towns on the  
10 north shore of Lake Sakakawea, that is, Garrison  
11 and New Town. What needs to be taken into account  
12 with these figures is that this is just the impact  
13 on two communities. If this figure were increased  
14 to include the low water impact to all the  
15 communities, resorts and recreation areas on the  
16 three upper reservoirs, the total would be  
17 staggering.

18           If the Corps of Engineers is going to  
19 follow through with its mission of meeting the  
20 contemporary needs of the basin while protecting  
21 its natural resources, then it's time for a  
22 change. The Corps studies have shown that a change  
23 in the Master Water Control Manual would have  
24 positive overall economic and environmental  
25 benefits. Seven of the eight basin states agree

1 it's time for a change. When seven out of eight  
2 votes are cast in favor of an issue, that is a  
3 mandate of 88 percent favoring the change. The  
4 Corps has the mandate from the basin states to make  
5 a change. It is specifically time to stop being  
6 intimidated and bullied by a few officials from the  
7 State of Missouri.

8           In an AP story in The Minot Daily  
9 Newspaper dated September 30, 2001, State of  
10 Missouri Assistant Attorney General William Bryan  
11 is quoted as saying, "They want to control our  
12 water." "They" means North Dakota, South Dakota  
13 and Montana. First of all, Missouri River Basin  
14 water is not the State of Missouri's water. It's a  
15 valuable resource for the entire basin. Second,  
16 the six mainstem dams only collect on the average  
17 about one-third of the runoff into the Missouri  
18 River Basin. The other 60 percent runs into the  
19 Missouri River below Gavins Point Dam.

20           In this same story Commissioner Howard  
21 Wood from the State of Missouri is quoted as  
22 saying, "We don't want North Dakota to get the  
23 water either." It is time for the Corps of  
24 Engineers to take a stand against such contentious  
25 rhetoric like this from a few Missouri state

1 officials and change the Master Manual so it  
2 reflects contemporary needs of the basin while  
3 protecting its natural resources. Garrison cannot  
4 afford to go through another drought on Lake  
5 Sakakawea under the current water control plan.

6 Garrison would favor summer elevations not  
7 dropping below 1830 feet mean sea level to support  
8 the fishery and keep Fort Stevenson State Park  
9 Marina fully operational and also raising the  
10 permanent pool by 20 feet. However, any of the  
11 proposed alternatives would be better than the  
12 current water control plan. Thank you.

13 COL. FASTABEND: Thank you, Mr. Messerly.

14 MR. MOORE: Mike Olson.

15 MR. OLSON: Good evening, Colonel  
16 Fastabend, Chairman Hall, tribal elders. My name  
17 is Mike Olson, and I'm here this evening on behalf  
18 of the U.S. Fish and Wildlife Service to issue a  
19 brief statement on the revised draft EIS for the  
20 Missouri River Master Water Control Manual.  
21 Perhaps more importantly, I'm also here this  
22 evening to listen to the important statements we've  
23 heard the first few hours of this hearing in person  
24 from the citizens in this part of the basin.

25 The service has the primary authority for

1 oversight of our nation's rarest plants under the  
2 Endangered Species Act. The Missouri River is home  
3 to the endangered pallid sturgeon, the least tern  
4 and the threatened piping plover. The decline of  
5 these species tells us that the river is not  
6 healthy for its native fish and wildlife and that  
7 there needs to be a change in its management to  
8 restore the Missouri to a more naturally  
9 functioning river system. A healthy river not only  
10 provides wildlife habitat, but also supports  
11 fishing and makes boating a more attractive  
12 recreational activity.

13           Congress committed the Federal Government  
14 to preventing extinctions by requiring federal  
15 agencies to use their authorities to conserve  
16 endangered and threatened species. During the last  
17 12 years our two agencies have been working  
18 together to modernize management of the Missouri  
19 River to help stabilize and hopefully begin to  
20 increase and recover populations of these very rare  
21 animals. This new approach was described recently  
22 in a document called the Missouri River Biological  
23 Opinion, published last November.

24           That opinion looks at the river as a  
25 system and outlines the status of these rare

1 species, the effects of the current operation on  
2 them and, most importantly, a reasonable and  
3 prudent alternative to the current operation and  
4 not jeopardize these species' continued existence.

5           Perhaps if you've read the RDEIS or the  
6 summary document provided by the Corps, you  
7 understand that the GP alternatives encompass the  
8 range of flows identified by our agency as  
9 necessary below Gavins Point Dam to keep the listed  
10 species from being jeopardized. Our agency, and  
11 the Corps, also, recognize the importance of some  
12 flexibility in management that would enable the  
13 Missouri River managers to capitalize on existing  
14 water conditions to meet the endangered species  
15 objectives without having to go through another  
16 12-year arduous process.

17           Other management changes identified in the  
18 biological opinion include a spring rise out of the  
19 Fort Peck Dam, an improved hatchery operation to  
20 assist declining pallid sturgeon populations,  
21 restoration of approximately 20 percent of the lost  
22 aquatic habitat in the lowest one-third of the  
23 river, infrasystem unbalancing of the reservoirs,  
24 and an acceptance of an adaptive management  
25 framework that would include improved overall

1 monitoring of the river.

2           In closing, my agency supports the  
3 identified goal of the revised Master Manual to  
4 manage the river to serve the contemporary needs of  
5 the basin and nation. These needs include taking  
6 steps to ensure that threatened endangered species  
7 are protected while maintaining other socioeconomic  
8 benefits provided by the operation of this system.  
9 The service stands behind the science used in the  
10 opinion, and is confident that the operational  
11 changes identified and included in the RDEIS as GP  
12 alternatives will ensure that these rare species  
13 continue to be part of the Missouri River's living  
14 wildlife legacy.

15           As you said earlier, Colonel, the Missouri  
16 River is a tremendous river with a significant and  
17 revered heritage. Our influence has altered this  
18 great river, and changes are needed to modernize  
19 and restore health to the river for the benefit of  
20 rare species and for the citizens of the basin, as  
21 well. Thank you.

22           COL. FASTABEND: Thank you, Mr. Olson.

23           MR. MOORE: Jim Berkley.

24           MR. BERKLEY: Good evening. I'm here  
25 representing the U.S. Environmental Protection

1 Agency. I'm not going to read exactly from my  
2 statement because I think that the contents makes a  
3 difference here.

4           What I would like to talk about in my  
5 statement is why EPA is involved, what their role  
6 is and some of the things we're doing relating to  
7 the master plan.

8           The EPA, one of the things -- one of our  
9 roles in the Master Manual process is we're  
10 required by law to review all environmental impact  
11 statements. In this review, it's an independent  
12 review and we will provide written comments and a  
13 rating or a grade on that Master Manual EIS.

14           The law requires us also to make our  
15 written comments available to the public, and when  
16 we do this, we're going to put them on our Website,  
17 and I have some cards with me, and if people are  
18 interested in the Website address and how to find  
19 that, I will be glad to talk to you after I make my  
20 comments or after the meeting is over.

21           When EPA reviews and rates an  
22 environmental impact statement, it focuses on two  
23 main areas. One is the degree of the environmental  
24 effects of the proposed action. The other is  
25 whether the environmental impact statement includes

1 sufficient analysis needed for the public and  
2 decisionmaker to understand the impacts of the  
3 alternative plans under consideration.

4           So in this Master Manual -- in this  
5 addition of the EIS Master Manual, what we're going  
6 to do, because there is not a preferred alternative  
7 selected, is we will rate each one of the  
8 alternatives, so you'll see that in our review.

9           A critical aspect of our responsibility is  
10 to assess whether or not the Corps has complied  
11 with all environmental laws, and to look at the  
12 regulations, to look at executive orders, and we'll  
13 look at laws such as the Endangered Species Act,  
14 Clean Water Act and Environmental Justice.

15           In our efforts during the past review of  
16 Master Manual documents, we have tried to work with  
17 the tribes to understand their concerns and their  
18 issues and then tried to express those concerns in  
19 our comments. And we are very much interested in  
20 working with the Three Affiliated Tribes to make  
21 sure we accurately express those concerns and  
22 understand them.

23           EPA is currently in the process of  
24 reviewing the RDEIS. Once our review is complete,  
25 our comments will be provided to the Corps in

1 written form, as I mentioned earlier, and will be  
2 on the Website. We understand that the issues and  
3 concerns are very complex. This is why we -- one  
4 of the reasons why we have teamed up with the Corps  
5 of Engineers and asked the National Academy of  
6 Sciences to provide an objective study by national  
7 experts on the state of the scientific information  
8 about the Missouri River ecosystem. The study will  
9 also recommend ways to improve scientific knowledge  
10 on the Missouri River infrasystem and approaches to  
11 adaptive management of the Missouri River and  
12 floodplain ecosystem.

13           We look forward to working with all the  
14 stakeholders and the tribes in the basin, and  
15 please feel free to contact me later on. Thank  
16 you.

17           COL. FASTABEND: Thank you, Mr. Berkley.

18           MR. MOORE: Susan Paulson.

19           MS. PAULSON: Good evening, Honorable  
20 Chairman Hall and to all my relatives and friends  
21 and all the people from the feds, whoever you guys  
22 are. My name is Susan Paulson and I'm a member of  
23 the Three Affiliated Tribes. I just came to  
24 listen, but since there wasn't many tribal members  
25 here, I feel an obligation to say a few words.

1           I'm here to acknowledge and to say a few  
2 words about my Grandfather, the Missouri River, the  
3 one that you're trying to manage. And I guess I  
4 feel kind of funny reading these papers talking  
5 about the Missouri River like it's not a thing with  
6 the spirit. Something with the spirit of our  
7 grandfather who followed this river for centuries,  
8 our people have lived along it all the way from  
9 Mexico up to this lake, mostly Arikara. I guess I  
10 feel obligated because my Grandfather Joe Packineau  
11 was standing in back of George Gillette as they  
12 signed the thing. I had to live in that house with  
13 them after we moved up here. I was very young and  
14 the trauma that we experienced.

15           I listened to all you nice gentlemen talk  
16 about the environmental impact statement. I wish  
17 someone would have done that with Indian people  
18 about how it was going to impact us when it was  
19 accomplished for your people. I really don't see  
20 any benefit for tribal people. I feel it's been a  
21 big violation and it's part of our historical  
22 trauma as we continue to suffer today. We have a  
23 lot of social problems. And my feeling is social  
24 services -- I'm the human services instructor at  
25 the college, having recently returned home and

1 tried to pick up the pieces that was caused by  
2 Garrison Dam, which was our biggest trauma which  
3 has really affected our people.

4           Today I talked in my class about  
5 posttraumatic stress syndrome and how the impact of  
6 the Garrison Dam has caused a lot of problems that  
7 we have. I know that it's happened, but I would  
8 just like to say these few words because I really  
9 feel that we're missing the boat in this whole  
10 thing.

11           Money isn't everything. Money is the  
12 reason of the world's power struggle. This kind of  
13 thinking, this kind of world view is the reason  
14 we're sitting in this state that we are today. I  
15 truly understand Osama bin Laden, and I think that  
16 the disrespect that is shown for native people or  
17 people anywhere are just unbelievable. The social  
18 impacts on our people are just unbelievable. I  
19 listened to the EPA person talk about the fish and  
20 all that kind of stuff, and I love my relatives,  
21 the fish, but when has anyone really looked at what  
22 our needs are? I look at how much money is spent  
23 on riprapping in reservation areas, which is almost  
24 nothing, but we make sure that the lands around  
25 Bismarck are riprapped. Our bodies are falling

1 into the water.

2           On top of this psychological impact that  
3 it's had on our people, we're still watching it,  
4 we're still being disrespected. We have people who  
5 I call rogues who rob our gravesites. We try to  
6 protect them as best we can with not very much  
7 resources. I beg that we look towards those  
8 things.

9           One of the biggest problems I have with  
10 everything about the government, and I have done a  
11 lot of work with the government, and it tends to be  
12 with every branch of the government, that is the  
13 inability for the federal government to learn how  
14 to do consultation. And I noticed that our  
15 chairman has a government-to-government  
16 consultation in here, and I would hope that you  
17 would ask him what that means. I would hope that  
18 you would call together our leadership and all the  
19 tribes along the Missouri, and I would hope that  
20 you would ask them to define consultation and  
21 develop an agreement of how that would be done, not  
22 after the fact, not after the plans have been made,  
23 not down the road. That's usually what happens to  
24 us. That's also part of the trauma that also  
25 contributes to the psychological trauma that our

1 people are going through today.

2           I would also like to bring your attention  
3 to the spiritual and emotional impacts, because  
4 spiritually there's a lot of stuff that goes with  
5 it that I won't even try to address because you  
6 wouldn't understand what I'm talking about, but I  
7 just want you to know there's a lot of spiritual  
8 impacts that's happened because of what's happened  
9 to our people along the river, our dead ones and  
10 our sacred sites.

11           And there is a legal responsibility of the  
12 Corps of Engineers, there's several laws, and I'm  
13 not going to quote them because you know what they  
14 are, that give you the obligation to try to protect  
15 these sites, these cultural sites. And I would  
16 hope that you would try to make that more a  
17 prominent feature in the Master Manual with  
18 consultation from the Tribes.

19           I listened to Mr. Balman talk about  
20 boarding school, and I, too, am a product of  
21 boarding school. Because they moved us up to the  
22 top lands up here, we didn't have enough food to  
23 eat, there was nine of us, and a lot of people went  
24 to boarding school in my generation because we  
25 really couldn't live, we had no income, we had no

1 economy, and that really caused a lot of the trauma  
2 we see today because our families were broken up  
3 very successfully. The Army Corps divided us up  
4 and promised us hospitals, but there was never an  
5 intent to build a hospital. And all the promises  
6 that were made were pretty much not accomplished.  
7 And I guess I have these words for you, is nothing  
8 sacred to you? Is everything about money?

9           And I was visiting with some other people  
10 and I told them, you know, the thing about western  
11 thinking is that they always want to defy nature.  
12 You know we have prophecies that say the water is  
13 going to run backwards and that will be the end for  
14 us. But we follow the river. That's part of our  
15 culture. We are the river. Nobody did an  
16 environmental impact statement about how it was  
17 going to affect our cultures and what it does to  
18 devastate us. There's just very few of us left.  
19 8,000 maybe here, 9,000. We're the last of the  
20 Three Affiliated Tribes, the Mandan, Hidatsa,  
21 Arikara. Colonel, maybe that doesn't mean anything  
22 to you, but it has a lot of meaning for me.

23           So we're a great people, but you came to  
24 see us. It's all about money. It's capitalism run  
25 amuck. It's always about money. Everything is --

1 all the decisions are based on money. But I ask  
2 this question once again, is anything sacred? So I  
3 just needed to say that much for my Grandfather,  
4 the river, and the concept of the statement from  
5 the Master Manual for the control of the Missouri  
6 River, and it's offensive to me because how can you  
7 control your grandfather? That thought is crazy.  
8 But we think as human beings we have control of  
9 things. That even those towers when they bombed  
10 the Pentagon, how many people died? A couple  
11 hundred. When they bombed those Twin Towers, how  
12 many people died? Thousands. And you know why?  
13 Because as human beings we thought we were smarter  
14 than God. We thought that we could build against  
15 nature. We thought that we could defy the law of  
16 gravity. And these are the lessons that we never  
17 learn and why the world is at war and why we  
18 disrespect each other nationally, internationally,  
19 in every kind of way.

20           And even listening to the rhetoric of the  
21 President makes me nauseous. They used the same  
22 words they used on us, uncivilized, barbarian. I  
23 can understand Osama bin Laden. We did a lot to  
24 cause that. We're not innocent bystanders in that  
25 either. The same thing happened to us. So I make

1 that analogy in all due respect. That's all I have  
2 to say. Thank you.

3 MR. MOORE: Lisa Johnson.

4 MS. JOHNSON: I'm a community member  
5 here. My husband is an enrolled member. And I was  
6 here earlier in the day and spoke with several of  
7 the people, the engineers, and I was told that  
8 studies are being conducted by the Corps to  
9 determine the cultural sites. But all the cultural  
10 sites are important. The shoreline is the Corps'  
11 responsibility. And they're failing in their  
12 duties. The erosion has taken many of the cultural  
13 sites and has disposed of a lot of them. The  
14 destruction of these sites by erosion, looting or  
15 vandalism is a heinous crime, and it's as bad to  
16 these people as the destruction of the World Trade  
17 Center is to nonIndians.

18 And I know I've seen -- a lot of people  
19 have seen homes and cities that are designated as  
20 historical landmarks, they're protected. I've seen  
21 sites along the highway that are historical  
22 markers. To these people cultural sites are also  
23 historically significant to them. And I also heard  
24 a lot of testimony about the fish and the birds and  
25 the water levels, but are these more important than

1 human beings? Thank you.

2 COL. FASTABEND: Does anyone else have a  
3 comment?

4 MR. MAYER: May I make a comment? My name  
5 is Richard Mayer. I'm a representative of the  
6 Three Affiliated Tribes. I guess one of the things  
7 I would like to say out of respect for my elders  
8 and the chair, your staff that's here, is that the  
9 importance of the taken lands. I think it's the  
10 United Nations Human Rights Council that issued a  
11 statement that to take away a land base from a  
12 cultural people is an act of genocide.

13 And if you look at our map right now, you  
14 can look at the land that we have and what we used  
15 to have, and by you giving back our taken lands, I  
16 believe that would be a step in the right  
17 direction, but not really is it going to make a big  
18 difference, but it will make a heck of a lot of  
19 difference to me to get some of that land back to  
20 create that cultural land base not only for us  
21 today, but for our future generations. It's going  
22 to mean a lot to my children. It's going to mean a  
23 lot to their children, too, if you give that back  
24 to us. We're talking about you taking  
25 responsibility for taking care of the cultural --

1 our cultural artifacts that are alongside the river  
2 lines, that we would be more than happy to do that  
3 ourselves if we had control of that land. And  
4 that's all I have to say. Thank you.

5 COL. FASTABEND: Thank you. Does anyone  
6 else have a comment tonight?

7 MS. ALBERTS: Good evening. My name is  
8 Bonnie Alberts. I am an enrolled member here of  
9 the Three Affiliated Tribes.

10 First of all, I want to take this  
11 opportunity to thank you for coming to us tonight  
12 rather than having us have to travel a distance to  
13 give testimony. But I'm a student here at the Fort  
14 Berthold Community College and I'm also the editor  
15 of our Tribe's tribal newspaper. But I'm only 21  
16 years old, and some of the things that Miss Paulson  
17 spoke about, I understand from a young person's  
18 point of view exactly what my elders are talking  
19 about and what it is my instructor -- she's my  
20 instructor at the community college -- is talking  
21 about.

22 When she was addressing the religious  
23 issues of our people, primarily the Arikara people,  
24 coming up the river from Mexico, one of the  
25 traditions that we have among our Arikara people,

1 and my grandmother still practiced it -- or she had  
2 practiced it in the past couple years that I was  
3 able to be fortunate to be a part of it, was there  
4 was a ceremony where -- there were two different  
5 ceremonies and one she talked about in our  
6 classroom where they would tie baby moccasins.  
7 After they finished a ceremony, they would tie baby  
8 moccasins to a cedar tree and send it down river so  
9 that the villages or our relatives down the river  
10 would be notified that we had had -- a ceremony had  
11 been done, and it also meant that whoever that  
12 child was or that baby was whose moccasins they  
13 were, prayers would be sent to that for a long  
14 life.

15           And I have a younger sister who is nine  
16 years old, and one of the ceremonies my grandmother  
17 had, it was a changing of the dress ceremony, and I  
18 guess I was able to witness those baby moccasins  
19 being tied after a dress had been changed and it  
20 was taken to near Washburn and placed in the river  
21 and sent down the river, and my grandmother told me  
22 that those were so my sister could live a good,  
23 strong life and grow to be a good, strong woman.

24           And the impacts, like she said, of the  
25 Garrison Dam are numerous, and from a very young

1 person's perspective, I understand completely what  
2 it is that my ancestors went through and it is -- I  
3 am still suffering from it today emotionally  
4 because what they had, everything related to the  
5 land, everything that made them a culture,  
6 everything that made them happy, everything about  
7 who they were is now under water.

8           And now two generations later I'm a  
9 product of some of that loss of culture and it's  
10 really -- it is really sad to know that, and why  
11 someone would take away another person's culture or  
12 another person's livelihood is hard to comprehend,  
13 it's hard to understand.

14           And I just ask that we be included when  
15 decisions are being made about the river and when  
16 choices are being made about the river because we  
17 were the first native inhabitants of this land or  
18 this country, and I feel as a young person that  
19 it's important for generations after me to know  
20 about the rich history of our culture, the rich  
21 history of who we are.

22           And even though I'm as young as I am, I  
23 have a younger daughter that's one year old, she's  
24 one now, and there's so much that I want to share  
25 with her, there's so much I'm going to want to

1 teach her, but how can I do that when already a lot  
2 of what we've lost can't be replaced? And what we  
3 have, it's important that we keep that, that we  
4 keep that alive.

5           And I just thank you for coming to us  
6 tonight and letting us testify in front of you  
7 because it's a -- to me I see it as a big step in  
8 tribal and federal government relations that we're  
9 able to today actually sit together and work things  
10 out together rather than us sitting back blindly  
11 unaware of what's going on. Thankfully today we're  
12 educated enough to understand what's going on.  
13 Again, that's thanks to the federal government that  
14 we have this education that we have today. So  
15 thank you.

16           COL. FASTABEND: Thank you very much for  
17 your comments. Does anyone else have any  
18 comments?

19           In closing, I would like to remind all of  
20 you that the hearing administrative record will be  
21 open through 28 February 2002 for anyone wishing to  
22 submit written, faxed, or electronic comments. In  
23 addition, if you want to be on our mailing list or  
24 receive a copy of the transcript, you need to fill  
25 out one of the cards available at the table by the



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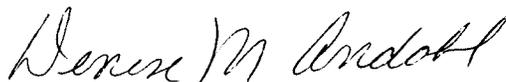
CERTIFICATE OF COURT REPORTER

I, Denise M. Andahl, a Registered  
Professional Reporter,

DO HEREBY CERTIFY that I recorded in  
shorthand the foregoing proceedings had and made of  
record at the time and place hereinbefore  
indicated.

I DO HEREBY FURTHER CERTIFY that the  
foregoing typewritten pages contain an accurate  
transcript of my shorthand notes then and there  
taken.

Bismarck, North Dakota, this 12th day of  
November, 2001.



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Denise M. Andahl  
Registered Professional Reporter

# **MASTER MANUAL PUBLIC HEARING**

**October 24, 2001**

**Oral Comments by Tex G. Hall**

**Chairman, Mandan, Hidatsa & Arikara Nation**

**On behalf of the people of the Mandan, Hidatsa & Arikara Nation, I welcome the Army Corps of Engineers to our homelands. The Three Affiliated Tribes was established in 1851 by the Fort Laramie Treaty. According to our Constitution and the United States government, treaties are the supreme law of the land and we as a Treaty Tribe are considered sovereign nations. As Chairman of a sovereign nation, I welcome this opportunity to provide comments on the Draft Environmental Impact Statement for the Master Manual for Control of the Missouri River. We will be providing very detailed comments on the Draft Environmental Impact Statement prior to February 28, 2002, the deadline for receiving comments.**

**Tonight, I'd like to comment on several concerns that tribes have and how the Master Manual will impact these concerns. In particular I want to stress that the river is a trust asset and the Army Corps as a federal agency is trustee. We need joint management of the river. The Mandan, Hidatsa and Arikara Nation is prepared to work cooperatively with the Army Corps on management of the river and on the following subject matters.**

- 1. Government-to-Government Consultation: This is absolutely essential. Consultation with tribal nations, according to Presidential Executive Order 13175, is vital to development of the Master Manual. Prior to the finalization of the Master Manual, all Tribal Nations along the River should be provided with in-depth consultation about how the final Master Manual will be constructed. The Mandan, Hidatsa & Arikara**

people particularly have been adversely affected by the activities of the Army Corps in the past. Our reservation – our homelands were displaced by the building of the Garrison Dam.

2. **Recognition of Winters Doctrine – Reserved Rights to Water from the River** Our reserved water rights under the Winters Doctrine must be acknowledged; the final Environmental Impact Statement must recognize this before the Master Manual is finished. In recognition of this Doctrine, the Mandan, Hidatsa and Arikara Nation is ready to act collaboratively with the Army Corps on how the river, specifically our water rights, are to be managed.
3. **Protection of Economic Activity Along the River** The Draft Environmental Impact Statement must consider the effects of the various alternative flow schedules on the economic well being of the Mandan, Hidatsa and Arikara Nation, for example, how the water levels will impact the various economic development plans we have for the Four Bears Casino and Lodge and other tribal businesses. Remember, Tribes, as well as States and private enterprises have economic interests in the flow of the river.
4. **Indian Trust Assets:** The United States has a trust responsibility to protect and maintain rights reserved by or granted to American Indian Tribes or individuals. When an Indian Trust Asset has been impacted by a federal project such as trust lands, mineral rights, cultural resources, water rights, or hunting and fishing rights then the federal agency in its action document must analyze those interests, the adverse impacts, and set forth appropriate mitigation and/or compensation

**commitments. We are ready to work collaboratively with the Corps to mitigate the following:**

- **Lake levels at Sakakawea and Oahe have dropped up to 12 feet, partly in response to low precipitation in the Missouri Basin over the last several years. This substantial drop has also been caused by the disproportionate role given by the Corps to navigation in the lower Missouri River.**
- **The dropping of the lake levels deprives the Tribes and their members and non-Indian business partners of the Tribes full and unconditional access to these important Reservoirs.**
- **The lake dropping also creates a substantial scar to the land and waters and takes away from the ongoing efforts of Tribes to enhance our recreation opportunities, to protect historic cultural properties and to restore endangered fish, native fish and aquatic and terrestrial habitat.**

**5. Environmental Justice Claims Environmental Justice Issues evolve out of Executive Order 12898 dated February 11, 1994. The Order provides that a federal agency shall make achieving Environmental Justice part of its mission by identifying and addressing as appropriate disproportionately high and adverse human health and environmental effects of its programs. Environmental Justice includes any adverse effect on minority and low-income populations. In the Missouri River, as Congress expends millions of dollars to recover endangered species, restore native fish, aquatic and terrestrial habitat, cultural resources and River economies, Environmental Justice requires a review of the availability of those federal benefits to minority and low income households and appropriate follow-through commitments.**

- **When the Garrison Dam was constructed by the Corps, we were relocated from the rich, fertile agricultural bottomlands, to grasslands not suited for our agricultural traditions.**
- **Lake Sakakawea created by the Garrison Dam is a long lake and has virtually eliminated meandering of the upper Missouri River as well as the flood lands, wetlands, and fish and game central to the Tribes' way of life. In their place has emerged over time noxious weeds that are endemic to the reservoir area.**
- **The lands adjacent to the reservoir are barren and have very few of the wetland characteristics that existed prior to the construction of the Garrison Dam.**

#### **6. United States Constitution and Equal Protection Clause**

**The Draft Master Manual Environmental Impact Statement fails to adequately set forth the Indian Trust Assets and Environmental Justice concerns of the Three Affiliated Tribes. Moreover to the extent that the Master Manual Draft Environmental Impact Statement relies upon Tribal input and Tribal documentation as set forth in Volume II, it violates the Equal Protection clause of the United States Constitution. Specifically, the Corps has elected to expend its funds to describe fisheries, flows, navigation, power and other socioeconomic concerns and included them in Volume I of the Draft. But when it comes to setting forth the Tribal concerns relating to the Indian Trust Assets and Environmental Justice, the Corps – notwithstanding repeated requests from the Tribes has relied upon the Tribes themselves to provide the documentation. Because there is no rational basis for this distinction the Corps is violating the Equal Protection clause of the United States Constitution.**

To correct this Constitutional deficiency and to comply with contemporary Council on Environmental Quality requirements, the Corps in its final Environment Impact Statement should at its expense specifically address Indian Trust Assets and Environmental Justice concerns for those Tribes whose reservations have been adversely affected by the Missouri River operations.

7. **Protection of Cultural Sites:** Changing the flows along the River under several of the preferred alternatives presented by the Army Corps following the issuance of the “Biological Opinion” will most likely create additional erosion along the shores of the upper three reservoirs. These reservoirs are projected to be the reservoirs that will provide the flow necessary to implement the preservation of economic activities along the river and to provide protection of endangered species. The analysis of these changes must include complete studies of how they will affect our cultural sites along the river and how any damage to our sites will be mitigated or prevented altogether. Under the Native American Graves Protection and Repatriation Act, to allow such sites to be eroded away or left unprotected is unacceptable. Protection of these sites (the vast majority of which are associated with the Mandan, Hidatsa & Arikara) needs to be the subject of lengthy review within the Master Manual.

**Substantial government-to-government consultation should be referenced not just for cultural site protection, but for all phases of the Master Manual itself.**

Last night in Bismarck Governor Hoeven presented testimony describing North Dakota's position on the Master Manual review. Today I will briefly reiterate the same strong and clear message that North Dakota and adjoining states have been voicing for years. The Missouri River Master Manual must be changed to meet the contemporary needs of the basin and the time for this change is far past due.

The five mainstem dams authorized by the Flood Control Act of 1944 were constructed in 18 years. If the Master Manual revision is completed in 2003, it will have taken 14 years. The people of North Dakota and the Missouri River Basin can wait no longer. Any further delay to the Master Manual is not acceptable.

The Missouri River is of vital importance to the State of North Dakota for the various uses it provides. The power generated by the Missouri River dams, provides affordable electric rates for our citizens and to the citizens of neighboring states who receive much of the power from Garrison dam. 20% of North Dakota citizens get their water from the river. Seven coal fired power plants use river water for cooling and six other industrial users make use of Missouri River water. Approximately 16% of the total irrigated area in North Dakota uses Missouri River water. The Missouri River, Lake Sakakawea, and Lake Oahe provide recreation opportunities to hundreds of thousands of residents and visitors to the state.

The quality of the water in the Missouri River is important for municipal water supply and cold-water habitat. If the elevation of Lake Sakakawea falls below 1825 feet during mid to late summer, the reduced oxygen concentration puts the nationally acclaimed sport fishery of the big lake in serious jeopardy. Low lake levels also increase risk to human health through the resuspension of sediment from the delta portion of the lake. Wave actions of low water disturb the sediment, releasing chemicals into the water that is subsequently used for municipal water supplies.

The cultural and historical sites along the Missouri River are important to the State, the Three Affiliated Tribes, and the Standing Rock Sioux Tribe and further warrant change in the management of the river. Many of these resources are destroyed on a daily basis through erosion, looting, and the absence of shoreline protection and stabilization. Stable lake levels would impact fewer sites, so that a change in the operating plan that results in more stable lake levels in times of drought would benefit a resource, that may otherwise be lost forever. These steps should be followed by the commitment of resources to stabilize the shoreline in order to protect and preserve these cultural and historical sites.

The draft EIS supports change by the benefits outlined in the five alternatives. They improve conditions for endangered species and conserve water in the mainstem reservoirs during times of drought. Unbalancing the reservoirs and increasing releases at Ft Peck may provide benefits for the pallid sturgeon, least tern and piping plover. Conserving water in the reservoirs during dry periods improves conditions for fish survival and thus recreation, and translates into more 'head' for hydropower. If these alternatives would have been in place during the drought of the late

1980s, Lake Sakakawea would have been 4 to 6 feet higher, translating into far better fish habitat, more efficient hydropower and an overall improvement in the economy of the areas that border the Missouri River.

The drought conservation measures included in the five new alternatives are essentially those agreed to by seven of the eight Missouri River Basin Association member states. Strictly from North Dakota's standpoint they do not go far enough. But, they are likely the most equitable means of distributing hardship during drought and are supported by seven of the eight states within the basin, including North Dakota. These drought conservation measures proposed by MRBA should be implemented as soon as possible and will be a vast improvement over the 40-year-old Master Manual. .

In conclusion, I urge the Corps to adhere to its current schedule for completing the Master Manual revision process. The time for equitable distribution of the benefits of Missouri River and equitable sharing of water shortages is now.

There is no question that any of the 5 proposed alternatives is marked improvement over the current water control plan. The results of the Economic and Environmental studies clearly illustrate how the Missouri River and the reservoirs can be better managed to benefit our children, the entire Missouri River Basin, and us. . If we manage them intelligently, realization of their potential can benefit all. On behalf of the people of North Dakota, and the Missouri River Basin, it is time for change on the Missouri River.

## **RECREATION IMPACT ON LAKE SAKAKAWEA**

**By Dick Messerly**

**10-24-01**

The economic impact felt by Lake Sakakawea area communities especially Garrison goes with the level of the lake. If water levels are at a "normal" level, around 1840 fmsl mark, then the economy of communities along the lake point to a substantial increase. When lake levels decline to a low point, economies show a drop in direct correlation to the lake level.

This correlation has been tracked by the Garrison Chamber of Commerce through collecting data on taxable sales, Lake Sakakawea elevations and visitation at Fort Stevenson State Park, a major state park on the north shore of Lake Sakakawea, just 3 miles south of Garrison. These figures are not estimates but hard facts.

In the low water year of 1991 when levels on Lake Sakakawea plunged to a low of 1815.5 fmsl the visitation at Fort Stevenson State Park also reached a low of 59,000 the taxable sales in Garrison were also cut to about \$7.5 million annually. In the year 1999 when water levels were more normal with a summer operating season of 1840 fmsl or above visitation at Fort Stevenson State Park was at 124,000 and Garrison taxable sales were at \$9.7 million. This is over a \$2 million increase from the low water year of 1991. Similar taxable sales correlations can be seen in the New Town figures. In 1991 New Town had taxable sales of \$2.6 million in 1999 taxable sales were at \$4 million.

As annual Lake Sakakawea elevations have been tracked and compared to taxable sales in Garrison and New Town and to visitation at Fort Stevenson State Park starting with the year 1978 a pattern of impact becomes graphically obvious. Low lake levels, below 1830 fmsl mean lower taxable sales and lower park visitation. These translate into a tremendous negative economic impact to this area. Show charts which graphically show the impacts. (See attached graphs)

According to the most recent RDEIS Summary navigation under the best conditions generates about \$7 million annually. Under the five proposed alternatives to the CWCP, navigation's benefit in a reduced flow year would be cut by about \$2 million. But a \$3.5 million cut in taxable sales were the impacts two towns on the north shore of Lake Sakakawea, Garrison and New Town. What needs to be taken into account with these figures is that this is just the impact on two communities. If this figure were increased to include the low water impact to all the communities, resorts and recreation areas on the three upper reservoirs the total would be staggering.

If the Corps of Engineers is going to follow through with its mission of "meeting the contemporary needs of the basin while protecting its natural resources" then it is time for change. The Corps studies have shown that a change in the Master Water Control Manual would have positive overall economic and environmental benefits. 7 of the 8 basin states agree it is time for a change. When 7 out of 8 votes are cast in favor of an issue that is a mandate of 88% favoring the change. The Corps has the mandate from the

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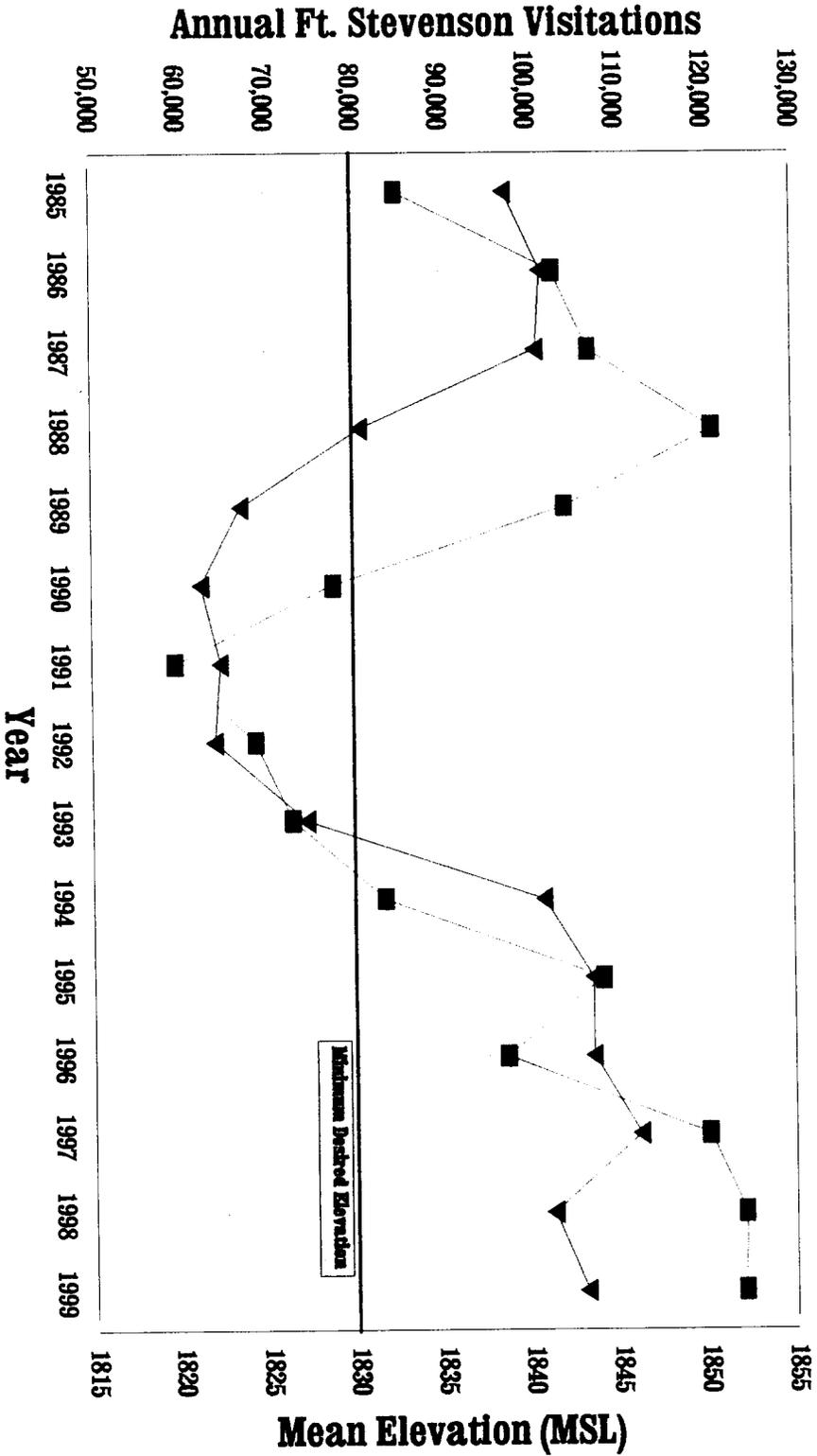
basin states to make a change. It is specifically time to stop being intimidated and bullied by a few officials from the state of Missouri.

In an AP story in the Minot Daily News paper dated September 30, 2001, state of Missouri Assistant Attorney General William Bryan is quoted as saying "They want to control our water" they meaning North Dakota, South Dakota and Montana. First of all Missouri river basin water is not the state of Missouri's water, it's valuable resource for the entire basin. Second the six main stem dams only collect on the average about 1/3<sup>rd</sup> of the runoff into the Missouri River basin. The other 60% runs into the Missouri River below Gavins Point Dam. In this same story Commissioner Howard Wood from the state of Missouri is quoted as saying "We don't want North Dakota to get the water either," It is time for the Corps of Engineers to take a stand against contentious rhetoric like this from a few Missouri State Officials and change the master manual so it reflects contemporary needs of the basin while protecting its natural resources. Garrison cannot afford to go through another drought on Lake Sakakawea under the CWCP.

Garrison would favor summer elevations not dropping below 1830 fmsl to support the fishery and keep Fort Stevenson State Park Marina fully operational and raising the permanent pool by 20 feet. But any of the proposed alternatives would be better than the CWCP.

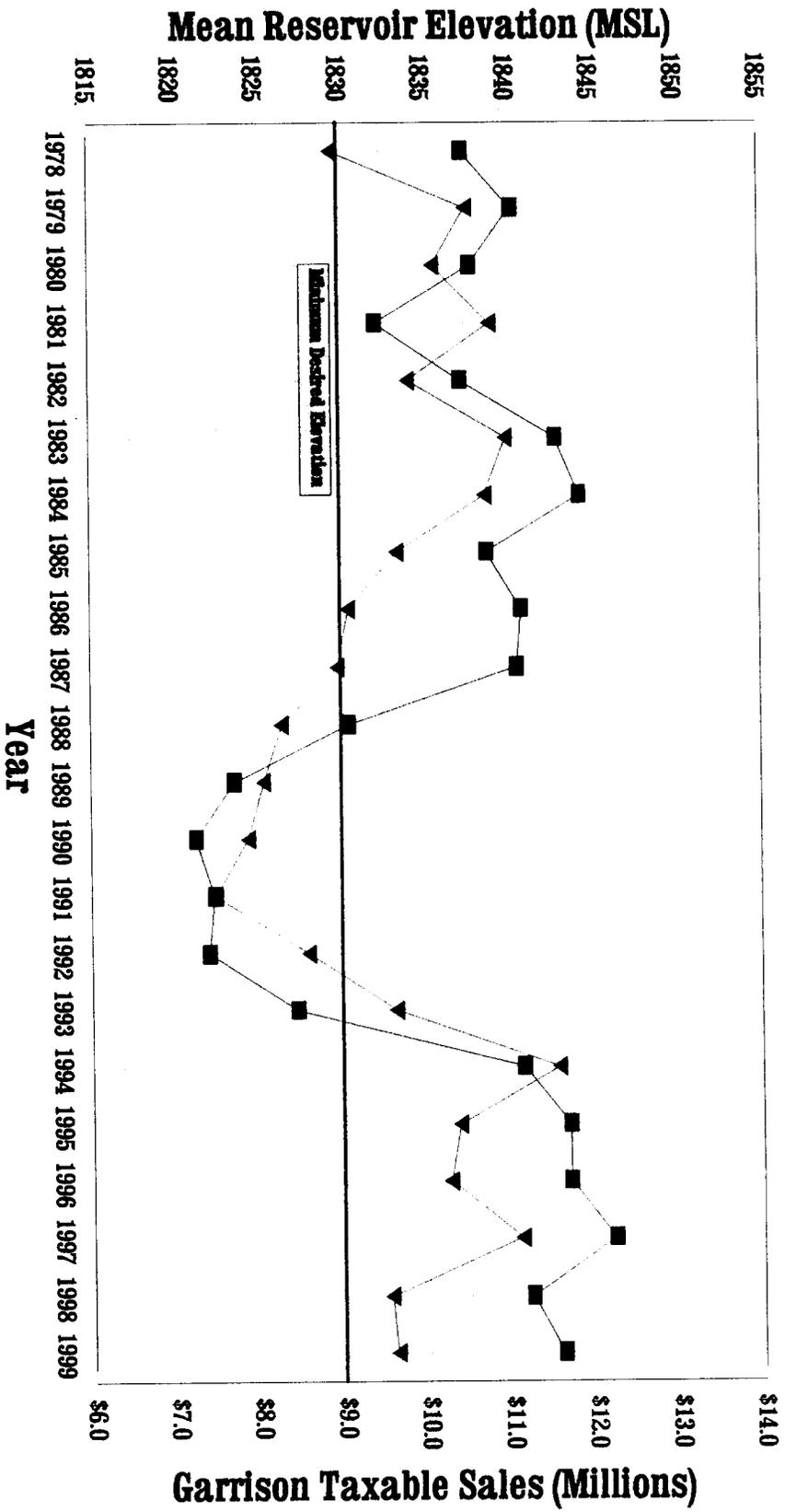
# Garrison Reservoir Elevation Study

## Park Visitations vs. Mean Elevation



# Garrison Reservoir Elevation Study

## Mean Elevation vs. Garrison Sales



▲ Taxable Sales  
 ■ Mean Elevation



**U.S. Fish and Wildlife Service  
Public Comments  
Missouri River Master Manual Hearing  
New Town, North Dakota, October 24, 2001**

**Good evening, my name is Mike Olson and I'm here this evening on behalf of the U.S. Fish and Wildlife Service to issue a brief statement on the Revised Draft Environmental Impact Statement for the Missouri River Master Water Control Manual. I'm also here to listen to the comments in person from citizens on this important issue.**

**The Service has primary authority for oversight of our nation's rarest animals under the Endangered Species Act. The Missouri River is home to the endangered pallid sturgeon and least tern, and the threatened piping plover. The decline of these species tells us that the river is not healthy for its native fish and wildlife, and that there needs to be a change in its management to restore the Missouri to a more naturally functioning river system. A healthy river provides wildlife habitat, supports fishing, and makes boating an attractive recreational activity.**

**Congress committed the Federal Government to preventing extinctions by requiring Federal agencies to use their authorities to conserve endangered and threatened species. During the last 12 years our agency has been working with the U. S. Army Corps of Engineers to modernize the management of the Missouri River to help stabilize and hopefully, begin to increase and recover populations of these vary rare animals. This**

**new approach was described recently in a document called the “Missouri River Biological Opinion,” published in November 2000.**

**The biological opinion looks at the river as a system and outlines the status of these rare species, the effects of the current operation on them, and a reasonable and prudent alternative to the current operation that will not jeopardize their continued existence.**

**Our biological opinion is based on the best available science and includes nearly 500 scientific references. In addition, we’ve sought out 6 respected scientists – “big river specialists” – who confirmed the need to address flow management, as well as habitat restoration. Further, the Missouri River Natural Resources Committee, a group comprised of the state experts on Missouri River management, endorses the science in the opinion.**

**If you have read the RDEIS or summary document, you understand that the “GP alternatives” encompass the range of flows identified by the Service as necessary below Gavin’s Point Dam to keep the listed species from being jeopardized. Our agency, and the Corps, also recognized the importance of some flexibility in management that would enable Missouri River managers to capitalize on existing water conditions to meet endangered species objectives without having to go through another 12-year process.**

**Other management changes identified in the biological opinion include a “spring rise” out**

**of Fort Peck Dam, an improved hatchery operation to assist declining pallid sturgeon populations, restoration of approximately 20% of the lost aquatic habitat in the lowest 1/3 of the river, intrasystem unbalancing of the three largest reservoirs, and acceptance of an adaptive management framework that would include improved overall monitoring of the river.**

**In closing, the Service supports the identified goal of the revised master manual - to manage the river to serve the contemporary needs of the Missouri River Basin and Nation. These needs include taking steps to ensure that threatened and endangered species are protected while maintaining many other socioeconomic benefits being provided by the operation of the Missouri River dams. The Service stands behind the science used in the opinion, and is confident that the operational changes identified in our opinion, and included in the RDEIS as GP alternatives will ensure that these rare species continue to be a part of the Missouri River's living wildlife legacy.**

**The Missouri River is a tremendous river, with a significant and revered heritage. Our influence has altered the river greatly. Changes are needed to modernize and restore health to the river – for the benefit of rare species and for people, too.**