

1                   MISSOURI RIVER MASTER MANUAL HEARING AND  
2                   THE GOVERNMENT-TO-GOVERNMENT CONSULTATION  
3                   ON THE REVISED ENVIRONMENTAL IMPACT  
4                   STATEMENT (RDEIS) FOR THE MISSOURI RIVER  
5                   MASTER MANUAL AND THE SPRING RISE  
6                   (M.R. & I. WATER PIPELINE DEPARTMENT,  
7                   OFFICE OF ENVIRONMENTAL PROTECTION,  
8                   FISH & GAME DEPARTMENT,  
9                   AND THE WATER RESOURCE DEPARTMENT)

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12                   HELD AT: Fort Peck Tribes Cultural Center  
13                   Poplar, Montana  
14                   February 13, 2002, 11:10 a.m.

15

16                   APPEARANCES:

17

18                   Hearing Officer: Col Kurt F. Ubbelohde,  
19                   Commander and District Engineer of the Omaha  
20                   District, U. S. Army Corps of Engineers

21

22                   Missouri River, Master Manual  
23                   representatives: Jody Farhat, Bill Miller,  
24                   Doug Latka, Pem Hall, Rick Moore, John  
25                   LaRandeau

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1                   The following proceedings were had:

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3                   COL KURT F. UBBELOHDE: Good  
4 morning. Welcome to the tribal hearing.

5                   This is the 19th comment session on  
6 the Revised Draft Environmental Impact  
7 Statement for the Missouri River Master  
8 Manual.

9                   My name is Colonel Kurt Ubbelohde.  
10 I'm the commander of the Omaha District,  
11 United States Army Corps of Engineers. With  
12 me today are members of my team that  
13 prepared the Revised Draft Environment  
14 Impact Statement, Rick Moore, John  
15 LaRondeau, Jody Farhat, also Pem Hall, from  
16 the Omaha District, and Bill Miller. And  
17 representing our WAPA Cooperating Agency is  
18 Brad Warren.

19                   We want everybody to have a common  
20 understanding of the RDEIS. Copies of the  
21 summary and handouts, as well as the entire  
22 document, are available at libraries and  
23 project offices throughout the nation. Also  
24 you can get a copy by writing us or over the  
25 web site. And the address is available from

1 one of the team members.

2 In a moment I'll give you a further  
3 description of the comment process and then  
4 we'll take your comments. And I just want  
5 everybody to understand that we'll stay here  
6 as long as necessary so that everyone can be  
7 heard.

8 This hearing session will come to  
9 order. Our purpose this morning is to  
10 conduct a hearing on proposed changes to the  
11 guidelines to the Missouri River mainstem  
12 system operation. I would like to  
13 acknowledge and thank the Assiniboine and  
14 Sioux Tribes of Fort Peck for requesting and  
15 participating in this hearing.

16 This hearing is held in the true  
17 spirit of government-to-government relations  
18 that the Corps wants to maintain with the  
19 Tribes of the Missouri River Basin.

20 Before I proceed, do we have any  
21 elected officials or representatives here  
22 that wish to be recognized?

23 TOM ESCAISEGA: (Raises hand.)

24 COL KURT F. UBBELOHDE: If  
25 you'd just stand and state your name.

1                   TOM ESCAISEGA: Tom Escaisega,  
2                   Fort Peck Tribe, Municipal Rural and  
3                   Industrial Water Pipeline Project.

4                   COL KURT F. UBBELOHDE: Ron  
5                   LaPierre is our reporter this morning.  
6                   He'll be taking verbatim testimony that will  
7                   serve as the basis for the official  
8                   transcript and record of this hearing.

9                   This transcript with all written  
10                  statements and other data will be made part  
11                  of the administrative record. A copy of  
12                  this transcript will be provided to  
13                  participating tribes.

14                 Persons interested in receiving a  
15                 copy of the transcript for this session or  
16                 any other session need to indicate so on one  
17                 of the cards available by the entrance.

18                 Also if you're not on our mailing  
19                 list and desire to be so, indicate that on a  
20                 card as well.

21                 In order to conduct an orderly  
22                 hearing, it is essential that I have a card  
23                 from anyone desiring to speak giving your  
24                 name and whom you represent. If you desire  
25                 to make a statement and have not filled out

1 a card, please raise your hand and we'll  
2 furnish one for you.

3 The purpose of today's session is to  
4 help insure we have all the essential  
5 information we will need to make our  
6 decision on establishing the guidelines for  
7 the future operations of the mainstem and  
8 that this information is accurate. This is  
9 your opportunity to provide us with some of  
10 that information. We view this as very  
11 important. You have an influence on the  
12 decision.

13 I want you to remember that today's  
14 forum is to discuss the proposed changes in  
15 the operation of the Missouri River mainstem  
16 system that are analyzed in the RDEIS, which  
17 concentrate our efforts on this specific  
18 issue.

19 It is my intention to give all  
20 interested parties an opportunity to express  
21 their views on the proposed changes fully,  
22 freely, and publicly. It is in the spirit  
23 of speaking a full disclosure and providing  
24 an opportunity for you to be heard regarding  
25 the future decision that we have called this

1 hearing. Anyone wishing to speak or make a  
2 statement will be given the opportunity to  
3 do so.

4 The Missouri River mainstem system  
5 consists of corps of engineering constructed  
6 and operated projects. So officially that  
7 makes us a project proponent. However, it  
8 is our intention that the final decision on  
9 the future operational guidelines for these  
10 projects reflect a plan that considers the  
11 views of all interests, focuses on the  
12 contemporary and future needs served by the  
13 mainstem system, and meets the requirements  
14 established by Congress.

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

23 Ultimately the final decision -- or,  
24 excuse me -- the final selection of a plan  
25 that provides the framework for the future

1 operation of the mainstem System will be  
2 based on the benefits that may be expected  
3 to accrue from the proposed plan as well as  
4 probable negative impact including  
5 cumulative impact. This includes  
6 significant social, economic, and  
7 environmental factors.

8 Should you desire to submit a written  
9 statement and do not have it prepared, you  
10 may send it to the U.S. Army Corps of  
11 Engineers, Northwestern Division in the  
12 Omaha office, attention Missouri River  
13 Master Manual. You may also submit your  
14 comments via FAX or electronically.

15 If you need further information on  
16 how to submit your comments, we can provide  
17 you that information. Just ask one of the  
18 team members.

19 The official record for this hearing  
20 closes on the 28th of February, 2002. To be  
21 properly considered, all the information  
22 must be postmarked by that date.

23 Before I begin taking testimony, I'd  
24 like to say a few words about the order and  
25 the procedure that will be followed. When

1 we call your name, please come forward to  
2 the podium, state your name and address, and  
3 specify whether or not you are representing  
4 a group, agency, organization, or if you're  
5 speaking as an individual.

6 We would appreciate it if you would  
7 provide anything that you're reading  
8 verbatim, written, that you provide a copy  
9 of that to the court reporter to facilitate  
10 his taking down your remarks.

11 After all of the statements have been  
12 made, I will be allowed, in case there are  
13 any additional remarks and during the  
14 session, I may ask questions which will  
15 clarify points for my own satisfaction.

16 Since the purpose of the hearing is  
17 to gather information which will be used for  
18 evaluating the proposed plan or alternatives  
19 to it, and since open debate between members  
20 is counterproductive to this purpose, I  
21 insist that all comments be directed to me,  
22 the hearing officer.

23 At this time I think we're ready to  
24 begin.

25 RICK MOORE: Okay. We have one

1 card. Tom Escaisega.

2 TOM ESCAISEGA: My name is Tom  
3 Escaisega, the manager of the M.R.&I. Water  
4 pipeline project with the Fort Peck Tribes.  
5 And we had previously went to the Corps when  
6 we had a consultation here or, I guess, a  
7 public meeting and we requested this  
8 consultation between the Corps and the Fort  
9 Peck Tribes.

10 And at this present time, I'm the  
11 only one here from the Tribes. I also have  
12 with me in attendance our engineer for our  
13 M.R.&I. Project, Mr. Mike Watson, and also  
14 for your EA person, environmental  
15 statements, is Joe Elliott. And after I get  
16 done, I think they may want to give a little  
17 bit of testimony.

18 But to start with the history a  
19 little bit, in 1888 our reservation was  
20 formed by an executive order; and at that  
21 time we had all rights to water, land, and  
22 minerals. And through the years it's been  
23 dwindling away. And we're still under the  
24 belief that we still own all our water  
25 rights, our minerals, and land; but through

1 compacts and through treaty, we know we have  
2 all these rights still inherent to the  
3 tribe. But, now, to this day, we have a  
4 compact with the State of Montana which was  
5 ratified with the State in 1985. Under that  
6 compact we have a million-acre feet of water  
7 out of the Missouri River, and ground water.

8 And out of one of those stipulations  
9 in the compact we were able to secure  
10 50,000-acre feet to be marketed off  
11 reservation. That hasn't materialized yet.

12 And I think one of the biggest  
13 concerns from the Tribal Council was that we  
14 make an issue with our water rights and with  
15 the alternatives that are being proposed,  
16 and we would like to see that incorporated  
17 into the document here.

18 I see one of our other people came  
19 in. I think she needs to fill out one of  
20 those cards. And I think she might be  
21 giving testimony too.

22 Also we had -- as part of the  
23 consultation, we want to cover a lot of  
24 issues with the Corps, ranging from cultural  
25 rights to cultural sites. We have done some

1 study on it but we need to study it a little  
2 further.

3 And I think the other issue was  
4 pipeline. We need to discuss the 404 permit  
5 off the streams, wetlands on the  
6 reservation.

7 And I know from some of the tribes in  
8 South Dakota a big issue arises when we find  
9 human remains or skeletal remains or  
10 dinosaurs, whatever, who has the ownership  
11 of it. And we believe that the ownership is  
12 the Fort Peck Tribes. And I would sure hate  
13 to see any confrontation between the Corps  
14 and the Tribes when it comes to ownership,  
15 Because I know in South Dakota this has  
16 happened -- and it's kind of a situation for  
17 both parties -- and would like to have a  
18 win-win situation for both parties.

19 I know we sent some correspondence to  
20 the Corps requesting information on  
21 different aspects, like total sediment.

22 COL KURT F. UBBELOHDE: Pardon.  
23 Repeat that, please.

24 TOM ESCAISEGA: Total sediment.  
25 And with the many tests being proposed with

1 the full tests, who is going to be  
2 responsible for the intakes, the damages.  
3 And we ask that the Corps identify that for  
4 us.

5 And from what I understand, it's  
6 still under the Corps' investigation, I  
7 guess, for future reference. But we still  
8 contend that it's the Corps' responsibility.

9 And one of the other issues that was  
10 in our compact, I know we have stored water  
11 rights behind the Fort Peck Dam. And I  
12 think at one time I had asked Mr. Dave  
13 Vader, when he was with the Corps, to  
14 research that for us, how much of that  
15 stored water behind the dam that we have  
16 access to.

17 Now, please, when you do these tests,  
18 there are many tests, don't say that's the  
19 Fort Peck Tribes' water you guys are  
20 releasing.

21 COL KURT F. UBBELOHDE:

22 (Laughter.) All right.

23 TOM ESCAISEGA: (Laughter.)

24 And I think at one point when we first  
25 started this M.R.&I. project, we asked the

1 Corps about putting the intake into the lake  
2 and also into the dam. But at that time we  
3 talked to Mr. Bill Miller, and we had Mr.  
4 Date, who did some renovation with the dam,  
5 put that in there. Then he went away and  
6 referred us to some people. And that never  
7 materialized. And we thought about  
8 originally putting the intake right there in  
9 the dredge cuts below the dam, but that  
10 didn't materialize because Fort Peck doesn't  
11 have any land out here.

12 So we moved it onto the reservation.  
13 And we've wanted to identify a spot there  
14 for the intake. I think we have three sites  
15 identified now. I think one of the biggest  
16 ownerships, the intake will be on tribal  
17 land.

18 And we would like to indulge the  
19 Corps to help us stabilize the banks around  
20 the intake if that's possible. I know  
21 that's one of the items we asked the Corps  
22 to help identify for the Fort Peck Tribes to  
23 develop.

24 But from my perspective, being a  
25 manager of our directive program, it's

1           always through the non-Indians that are not  
2           tribal Indians that get the benefits of the  
3           Corps programs and somehow we would like to  
4           see that switched around.

5                     I know in the consultation coming up,  
6           maybe that's a start. And it might be  
7           beneficial to the Fort Peck Tribes with the  
8           Corps help. But I know in the past the  
9           Tribes and Corps didn't really see eye to  
10          eye.

11                    And one of the other things was the  
12          Biological Opinion from the U. S. Fish &  
13          Wildlife and also the Corps saying that:  
14          When we put our intake in, it was for the  
15          pallid sturgeon. Then the last thing that  
16          came in was the tern and the piping plover  
17          on there.

18                    And some of the comments made by the  
19          council people was that: How can we put the  
20          animals above the life of the individual, or  
21          the tribal members, if we want to give them  
22          good water. This comes into a big play, I  
23          guess.

24                    I guess what I understand is that you  
25          and Fish & Wildlife has the authority to

1 stop the project. And we did have the  
2 meeting with the U.S. Fish & Wildlife  
3 people; and they said it wasn't really a big  
4 item on their agenda, and would get it  
5 pretty much through. But then I don't know  
6 how the Corps fits in there with U. S. Fish  
7 & Wildlife. I guess what we're asking here  
8 is the Corps to give us some kind of answer  
9 back, how the U.S. Fish & Wildlife tells the  
10 Corps what to do or what.

11 But the other things that are coming  
12 up, I think, through the consultation, I  
13 know we asked Mr. Bill Miller to be here to  
14 identify the full test and mini test. And  
15 we had a conversation back before we started  
16 that it probably wouldn't happen this year  
17 because of our kind of a drought situation  
18 that we're in and the dam not being up to  
19 speed or storage up there.

20 And I'll say again, if you release  
21 that water, don't say it's the Fort Peck  
22 Tribes' portion. I know we had a compact  
23 with the Corps that we had a traditional  
24 resources cultural inventory. And some of  
25 the things we encountered was from the

1 landownership from the non-Indians or fee  
2 land. We went to them and asked them to  
3 sign it. They said, "Well, who are you  
4 doing it for?" We say the Corps, and they'll  
5 tell us no, flat out.

6 But we still go back and bombard them  
7 with a, "Yes, you can do that. It will be  
8 beneficial to this investigation from the  
9 Corps and also help us in the M.R & I  
10 project."

11 I guess we go up to get the consent  
12 to enter their land so we can give them  
13 water. It will be beneficial both ways.  
14 That's what we're trying to find out. And  
15 so far we have completed the reservation  
16 part of the Corps on that part, but on the  
17 south side of the river which is primarily  
18 off the reservation, we have about 85  
19 percent of that completed for consent forms  
20 over there.

21 But I don't know what you guys did to  
22 the people over there in that fee land, but  
23 they do not like the Corps for some reason.

24 I'm trying to help you. I think from  
25 us trying to help you guys you should give

1 us about a million dollars to kind of smooth  
2 out the problems. (Laughter.)

3 COL KURT F. UBBELOHDE: A  
4 finder's fee?

5 TOM ESCAISEGA: Yeah.

6 I think that's about all I have.  
7 I'll ask Mr. Mike Watson to come up. I  
8 think he'll handle the technical aspect of  
9 the project. Then Joe Elliot. Then I think  
10 probably after that Deb Madison who is the  
11 director of the EOP.

12 COL KURT F. UBBELOHDE: Okay.

13 MIKE WATSON: Thank you, Tom.

14 My name is Mike Watson and I'm  
15 representing the Fort Peck Assiniboine and  
16 Sioux Tribes this morning as their engineer  
17 on the rural water project that Mr.  
18 Escaisega is the director, as well as other  
19 matters related to the river.

20 The Tribes' reservation is bounded on  
21 the south by the Missouri River below Fort  
22 Peck Dam over a distance of 141 miles,  
23 between River Miles 1621 and 1762.  
24 Therefore, the interest of the Tribes in  
25 this matter is significant.

1                   Approximately 75 percent of the north  
2                   bank or the left bank of the Missouri River  
3                   between the dam and the backwaters of Lake  
4                   Sakakawea near the border with North Dakota  
5                   lies within the reservation in the reach to  
6                   be affected by the testing and future  
7                   operations to generate a spring rise.

8                   The tribes have communicated with the  
9                   Corps of Engineers on this subject on  
10                  several occasions, and we would request that  
11                  as part of our testimony this morning that  
12                  the Corps reexamine that correspondence,  
13                  some to Becky Latka and some to the  
14                  Northwest Division.

15                  There has been some confusion on our  
16                  part with regard to where this communication  
17                  should go. Mr. Miller, who is here this  
18                  morning, has been working on the mini tests  
19                  and the full tests. And we're also  
20                  concerned about the entire scope of the  
21                  operation of the Missouri River that is part  
22                  of the Master Manual update, and there has  
23                  been some jurisdictional gray area between  
24                  Mr. Miller's efforts and those staff that  
25                  are working on the Master Manual in general.

1                   So we want to make sure that the  
2                   correspondence that we filed previously is  
3                   examined by the right parties within the  
4                   Corps.

5                   Now, the concerns that the Tribes  
6                   have had have been fairly well documented in  
7                   this correspondence. As Mr. Escaisega  
8                   points out, the Tribes as the beneficiaries  
9                   of Public Law 106-382, the Fort Peck  
10                  Reservation Rural Water Act of 2000,  
11                  executed on October 27, 2000, which provides  
12                  for the diversion of the Missouri River at  
13                  an intake near Poplar. And this will serve  
14                  a large area of Northeastern Montana. And  
15                  we can provide maps that show the full scope  
16                  of this project.

17                  But it involves all of the Fort Peck  
18                  Indian Reservation and four counties outside  
19                  the reservation, and reliance will be placed  
20                  on the intake and water treatment plant that  
21                  will divert water from the Missouri River.

22                  The Tribes have asked that the Corps  
23                  provide a plan for the protection of the  
24                  intake site including facilities in the  
25                  floodplain of the Missouri River and a plan

1 for mitigation or replacement of facilities  
2 stemming from the full tests and any  
3 proposed change in the operating procedures  
4 at Fort Peck Dam.

5 So there is concern about the intake  
6 on this facility, and the Tribes have asked  
7 for the Corps to provide a plan for the  
8 protection of the intake.

9 The plan must address a mechanism for  
10 financial repairs and replacement of the  
11 intake and related facilities through funds  
12 available through the Corps of Engineers or  
13 federal entities other than the entity  
14 established for the operation, maintenance,  
15 and replacement of the water system.

16 The Tribes have asked that the Corps  
17 provide a plan for funding the additional  
18 costs of treating Missouri River water to  
19 remove enhanced levels of suspended  
20 sediments at the water treatment plant for  
21 this project.

22 The Tribes have asked for a plan for  
23 protection, mitigation, replacement, funding  
24 of existing intake other than municipal  
25 water systems irrigating project and other

1 intakes that the Tribes have or will have  
2 within the boundaries.

3 The Tribes are also considering the  
4 diversion of the Missouri River water for a  
5 new irrigation project and that irrigation  
6 project would irrigate between 10 and 20  
7 thousand acres. And there is concern about  
8 how the future operation of the river would  
9 impact that intake.

10 The Tribes have asked that the Corps  
11 provide an analysis of the impact of the  
12 mini tests, full tests and any future  
13 operational changes at Fort Peck Dam on the  
14 erosion of the north or left bank of the  
15 Missouri River across the reservation.

16 The Tribes have asked that the  
17 analysis include the impact of future  
18 operations on the mechanisms of accretion  
19 and avulsion and the impact of future  
20 operations on changes in ownership that may  
21 be caused by movement of the banks or  
22 channels of the Missouri River. The  
23 analysis should also include the impact of  
24 future operations of the elevation of the  
25 bed of the River as a result of aggradation

1 or degradation.

2 Now, this comes from knowledge of the  
3 history of the degradation between the dam  
4 and Wolf Point and from there down stream  
5 the history of aggradation and its  
6 consequences.

7 The Tribes have asked that the Corps  
8 provide maps of the Missouri River Valley  
9 between the east and the west boundaries of  
10 the Fort Peck Indian Reservation outlining  
11 the soil types, geologic anomalies and any  
12 other factors that will permit definition of  
13 areas more susceptible to erosion and areas  
14 less susceptible to erosion. The Tribes  
15 have asked that that analysis must provide  
16 conclusions with respect to means of  
17 compensating landowners within the Fort Peck  
18 Indian Reservation for loss of land whether  
19 those landowners are the Tribes, allottees,  
20 or private owners.

21 The Tribes have asked that the Corps  
22 provide a plan for review by the governing  
23 body, a plan that would provide for safety  
24 during testing and future operations. This  
25 plan should include, among other things, the

1 methods of notification and warning before  
2 and during testing or operating procedures  
3 to artificially produce a spring rise. The  
4 plan should acknowledge and address warning  
5 and safety procedures for cultural and  
6 spiritual ceremonies, recreation,  
7 landowners, wood gathers, hunters, fishermen  
8 and others that would normally occupy the  
9 river, its banks, and its floodplain.

10 The plan should address the potential  
11 for rainfall and snow melt events in the  
12 Missouri River above Fort Peck Dam, such as  
13 the 1948, 1952, and 1964 events, and a loss  
14 of flood control capability due to revised  
15 operational procedures to maintain reservoir  
16 levels at or near spillway elevations in the  
17 May-June period in order to accomplish the  
18 release of water from the spillway for an  
19 enhanced spring rise. The plan should  
20 address any known concerns with regards to  
21 the capability of the spillway to perform  
22 during the mini test, the full test, or  
23 during future operations.

24 The Tribes have requested that the  
25 Corps provide a plan for review by the

1 governing body for the protection of human  
2 remains, cultural, historical and  
3 archeological resources known to exist in  
4 the Missouri River Valley and that may in  
5 the future be exposed by testing and/or  
6 future operating procedures.

7 The Tribes have asked that the Corps  
8 clearly present a report to the governing  
9 body on the benefits to the Tribes, their  
10 lands, and their resources of the proposed  
11 revisions in operations of Fort Peck Dam.  
12 The Tribes ask that the report address  
13 economic, environmental and cultural  
14 benefits. The report must also address the  
15 impact of the mini test, full test and any  
16 future operational changes on aquatic  
17 habitat, riparian habitat with special  
18 attention on our cottonwood forest,  
19 endangered or threatened species, and upon  
20 species that are not threatened or  
21 endangered.

22 Moreover, the report must address the  
23 impact of changes in the operation of Fort  
24 Peck Dam on hydropower resources of the  
25 Eastern Division of Pick-Sloan particularly

1 on the resource pool from which the Fort  
2 Peck Assiniboine and Sioux Tribes will  
3 receive federal power starting on January 1,  
4 2001, and continuing for the next 20 years.

5 The report is requested to include an  
6 assessment of the financial impact of  
7 operational changes on the Tribes'  
8 hydropower allocation as well as the  
9 financial impact on the Tribes from any  
10 other positive or negative changes.

11 And finally the Tribes request the  
12 Corps prepare and present a detailed plan to  
13 establish field baseline conditions and  
14 thereafter to monitor changes in the field  
15 to the river banks, the river bed, suspended  
16 sediments, bed load, aquatic habitat,  
17 riparian habitat, and other resources and  
18 facilities. They've requested that this  
19 plan should describe how changes caused by  
20 revised operating procedures will be  
21 determined relative to historic operating  
22 procedures and how those determinations or  
23 marginal changes will be used to define  
24 damages, mitigation requirements and  
25 compensation.

1                   The Tribes have gone forward with  
2                   some investigation to determine the impact  
3                   of proposed operating procedures on  
4                   suspended sediment and those investigations  
5                   have concluded that there would be a 7  
6                   percent increase in suspended sediment with  
7                   a change in flows from the historic pattern  
8                   to the proposed pattern with the spring  
9                   rise.

10                  This is a significant concern and  
11                  interrelates with aggradation, degradation,  
12                  bank erosion, riparian habitat and other  
13                  resources. The Tribes have shared this  
14                  knowledge with the Corps of Engineers but  
15                  have not received any response with regard  
16                  to that analysis.

17                  This concludes my comments. We will  
18                  be happy to provide anything in writing to  
19                  further assist in the understanding.

20                  JOE ELLIOTT: My name is Joe  
21                  Elliott. I'm from Missoula, Montana. I'm a  
22                  consultant to the Fort Peck Assiniboine and  
23                  Sioux Tribes. And I just have a question.

24                  Will the Fish & Wildlife report be  
25                  prepared for the revised operations of the

1 system? And if not, why not? Thank you.

2 COL KURT F. UBBELOHDE: Are  
3 there any others who wish to make a  
4 statement.

5 DEB MADISON: Yes.

6 COL KURT F. UBBELOHDE: This is  
7 being done in a formal testimony way, so you  
8 come to the podium, state your name, who you  
9 are, etc., and we'll do that.

10 DEB MADISON: Okay. I'm going  
11 to submit comments later on through the  
12 Tribes.

13 COL KURT F. UBBELOHDE: That's  
14 perfectly all right.

15 DEB MADISON: All right. Let  
16 me give you this then. My name is Deb  
17 Madison. I'm the environmental program  
18 manager for the Fort Peck Tribes.

19 And a couple things on the Master  
20 Manual, Adaptive Management. I think that  
21 is a terrific idea. We're working  
22 cooperatively right now with the State of  
23 Montana on a number of issues. And I know  
24 the State of Montana is also interested in  
25 adaptive management.

1                   I would propose, though, that results  
2                   of the adaptive management, when we're  
3                   talking about bringing together, you know,  
4                   high level science in the basin to come and  
5                   do large river ecology, I would propose that  
6                   there be separate breakout sessions, though,  
7                   for the Tribes, Fish & Game Department,  
8                   Water Resource Department, Environmental  
9                   Protection, simply because I think in a  
10                  purely Tribal -- through a Corps setting and  
11                  a Tribal setting it's much better than if we  
12                  bring in other interests. It will give the  
13                  Tribes a much more, I would say, higher  
14                  level of comfort that we would feel more  
15                  free to ask questions, questioning the  
16                  results, and learn from that experience  
17                  than if we're mixed together with a lot of  
18                  state agencies, environmental advocacy  
19                  groups and that type of setting. I think in  
20                  the spirit of government consultation that  
21                  would be a good first step.

22                  And also in terms of those Basin work  
23                  groups, the State of Montana met with us  
24                  last week and are very interested in putting  
25                  together a Montana-Missouri River Basin

1 group to bring together these same kinds of  
2 professionals that exist within this part of  
3 Montana and, you know, to the head waters as  
4 well.

5 And I think that's a really good  
6 idea. And I know they're going to be  
7 proposing that, and we would suppose that  
8 effort.

9 And once again, we would like to see  
10 that in terms of either figuring out a way  
11 to fund it, you know, through congressional  
12 authorization, or other agencies. Because I  
13 think the Corps has done a good job of  
14 putting together a lot of information  
15 already and providing it in a format.  
16 You've got the contacts, you've got the  
17 documents, you've got a lot of the issues in  
18 the Basin examined and reexamined. I think  
19 this is really good to keep you in that  
20 mode, sort of being the team leader, so to  
21 speak, on that particular issue.

22 COL KURT F. UBBELOHDE: If I  
23 could ask for clarification. Is it a state  
24 basin ----

25 DEB MADISON: Yes.

1 COL KURT F. UBBELOHDE: ---  
2 organization that you're asking for the  
3 Corps to kind of take a leadership role  
4 over?

5 DEB MADISON: To help support,  
6 yes.

7 COL KURT F. UBBELOHDE: The  
8 Corps?

9 DEB MADISON: Yes. We'll  
10 probably be looking for that kind of issue.

11 Let's see. What else can I think of?

12 Winter flows. We've done a lot of  
13 research up here -- not a lot -- the last  
14 three years on ice flows and erosion from  
15 ice. And there's beginning to be some  
16 results that point to ice being more of a  
17 problem than increased spring flow. And  
18 we're looking at a number of around 90,000  
19 CSF maximum release during the winter months  
20 out of Fort Peck Dam as a way to possibly  
21 minimize the effect of ice flows over the  
22 winter.

23 Because what can happen when that ice  
24 moves out, then you have trouble with  
25 sandbars, pumps suddenly moved a quarter

1 mile away from where they were before, and  
2 the open water channel and all that sort of  
3 thing.

4 Okay. The water quality section of  
5 the analysis section of the RDEIS from  
6 August 2001, I felt, was a little bit short  
7 of information, specifically about metals.  
8 I think we need to take a really hard look  
9 at the impact of metals.

10 Right now specifically mercury and  
11 arsenic, we're working with the State of  
12 Montana on a TMDL, and starting that process  
13 hopefully this summer for intensive  
14 monitoring, this summer on the Missouri  
15 River. And I think the Corps needs to  
16 examine some of -- I know they have some  
17 really good data available on it -- help us  
18 get a handle on how much is actually coming  
19 from the Fort Peck Dam, and some options  
20 like how does hydro modification affect  
21 those levels, specifically.

22 And that has impact to our water  
23 supply as well, because when we talk about  
24 putting in a large intake system, obviously  
25 we're going to have to know what we can

1 expect in terms of mercury and arsenic.

2 Let's see. Also there was a little  
3 bit of discussion earlier about stop  
4 criteria on the spring rise. We're not as  
5 concerned about the Yellowstone River,  
6 although the State of Montana is quite  
7 concerned about the Yellowstone River and  
8 flood levels there and initiating some stop  
9 criteria at that point. I think that's  
10 something that needs to be negotiated, and  
11 I'm sure you are going to look at it as part  
12 of the spring rise. Many tests -- That  
13 isn't going to happen for awhile, it doesn't  
14 look like, at least not here. So I still  
15 think that's something that needs to be  
16 flushed out a little further, especially  
17 when we're looking at cultural and  
18 historical sites and inventory that's soon  
19 to be completed along this stretch of the  
20 Missouri River.

21 Finally -- I guess not finally -- But  
22 what I want to talk about right now is the  
23 hydropower section of the manual. I had a  
24 little trouble understanding that part  
25 exactly. I did talk to our utilities

1 director this morning, who has been  
2 intricately involved with Western Power  
3 Administration and getting WAPA Power to the  
4 Sioux Tribes. At this point we are about --  
5 90 percent of our power comes from MDU,  
6 which is only about 25 percent relying on  
7 WAPA Power.

8 So actually the impact to those 90  
9 percent is relatively small, at least from  
10 what I can figure out from the manual  
11 section. The other part of the reservation,  
12 10 percent is on the rural electric  
13 cooperatives. One of the cooperatives, I  
14 believe, is 100 percent relying on WAPA  
15 Power. And those folks could see some  
16 issues with their power bills.

17 And I guess out of all of that, I'm  
18 trying to figure out, although the manual  
19 had no direct impact to tribes for  
20 hydropower, I think there are some impacts  
21 there and we need to flush those out a  
22 little better in the review process, just so  
23 it's easier maybe to look at a graph or a  
24 chart or something.

25 And I think we have people available

1 to help with that. They've already done a  
2 lot of the leg work that needs to happen.

3 Finally, I guess, from our office's  
4 prospective, we are pushing pretty heavily.  
5 And I don't want to go on the record as  
6 being firm on this, but we are looking very  
7 hard on pushing pretty heavily on it. It  
8 seems to fit a lot of the criteria, the  
9 priorities of the Tribes, in terms of water  
10 supply, recreation, and at the same time  
11 makes efforts to protect the endangered  
12 species. I don't think the Tribes are  
13 opposed to that, but they want to make sure  
14 that individual tribal members and overall  
15 tribal interest is protected. And I think  
16 that GP1528 option is very close to meeting  
17 that.

18 But I, you know, I wouldn't cast that  
19 in stone until we get a letter from the  
20 chairman, which should be coming by the end  
21 of the month. And we've got some other  
22 folks looking at that.

23 It was interesting to note in the  
24 manual that the Corps thinks that's a good  
25 starting point. And I think -- I wish in

1 light of NEPA that the Corps had selected  
2 preferred alternatives. It would have made  
3 my job easier and I would feel a little  
4 more, I guess, comfortable making a  
5 recommendation on behalf of the Tribes.

6 And I'll conclude right there, if  
7 that's okay.

8 COL KURT F. UBBELOHDE: Okay.  
9 Thank you.

10 All right. With respect to the  
11 testimony to the Manual, Master Manual, are  
12 there any others who wish to make a  
13 statement?

14 Part of our purpose for coming up  
15 today, of course, is to pursue government  
16 -to-government talks, so I'd like to sort of  
17 transform the discussion from specific  
18 testimony regarding the Master Manual into  
19 addressing and carrying on a dialog to  
20 address some of the concerns of the Tribes  
21 as put forth in some of the statements  
22 you've already made as well as some of the  
23 documents that have been referred to in the  
24 mailings, etc.

25 But in order to do that, let me just

1 close out officially the testimony for the  
2 Master Manual.

3 This will remain on the record for  
4 purposes of just having a good transcript of  
5 what occurs here.

6 Since I'm relatively new to this  
7 process, having been in the Omaha District  
8 for just, oh, around six months -- and this  
9 is certainly an important process, I don't  
10 want to get off on the wrong foot or  
11 anything -- so I'm going to ask if there's a  
12 specific question that we should dialog over  
13 first to kind of -- if there's something of  
14 a higher priority or something so I don't  
15 come in at the wrong level from your  
16 prospective, Tom, is there something  
17 specifically? My goal is to try and address  
18 everything, but if there is a particular  
19 thing that we should start with from your  
20 prospective, let's do that.

21 TOM ESCAISEGA: I think we  
22 requested information from the Corps on  
23 stuff said to them earlier but we haven't  
24 had an official response to it from them. I  
25 understand the response is to a different

1 agency in your department from the Tribes  
2 perspective, and we haven't received  
3 anything on that.

4 COL KURT F. UBBELOHDE: Okay.  
5 We have an organization that is divided, as  
6 I think you probably know. The Northwestern  
7 Division, which is commanded by Brigadier  
8 General Fastabend headquartered out of  
9 Portland, Oregon, serves as a regional  
10 command for things going on in the Missouri  
11 Basin.

12 Subordinate to the Division is the  
13 District or the Omaha District being one,  
14 Kansas City, etc.

15 So I served as a subordinate  
16 commander with focus over portions of the  
17 entire basin. And there are other  
18 commanders that have other pieces and other  
19 responsibilities. And we attempt to serve  
20 our stakeholders in a virtual way.

21 So what you're commenting on is that  
22 when you sent a letter to the Corps, it may  
23 be that it's coming to the District, because  
24 we have responsibility of maybe something  
25 that has to be handled by the Division

1           because of their responsibilities and the  
2           roles that they play. And so we're not  
3           doing a very credible job right now serving  
4           your needs in a virtual way.

5                     To focus on a specific piece of --  
6           specific request, I think we can answer some  
7           of the requests that you made to us in  
8           letters by, I think, probably having Bill  
9           come up and talk about the things that we're  
10          doing with respect to the mini and the full  
11          tests. Because that will discuss some of  
12          the various actions that are ongoing, which  
13          you have asked for plans on. And we are  
14          working those things in a matrix way,  
15          working with the Division, as well as at the  
16          district level. And hopefully by presenting  
17          some of this information we can sort of  
18          address those concerns.

19                    And if we don't do it adequately  
20          through this dialog, we'll find out where  
21          the gaps are and we can try and get some  
22          sort of an idea of where we need to do a  
23          better job of communicating.

24                    So why don't we have Bill come up and  
25          talk a little bit about some of those.

1 BILL MILLER: Tom, what I first  
2 want to do is address your request for  
3 plans. And I'm talking from the March 19,  
4 2001, list. Most of the lists are separate.  
5 I think the list that you quoted today,  
6 there are several versions of this list. It  
7 may have a few additional things that I  
8 haven't addressed on this one, but this is a  
9 list I will talk from.

10 The first issue we would want to  
11 address is the plan for protection of the  
12 regional MRI intake site and related  
13 facilities in the floodplain, including a  
14 plan for the repair and/or replacement of  
15 those facilities if damaged by future  
16 operations connected with a spring rise or  
17 otherwise.

18 The plan that we address, it  
19 addresses the actual intake. And as I  
20 talked before, to fully address this, we are  
21 making -- we are envisioning an intake  
22 similar to other industrial water intakes,  
23 but it's just in the process. Those  
24 documents, you know, don't exist at this  
25 time. So we're operating at that level.

1                   And operating from that level, we  
2                   have not foreseen damages from the mini  
3                   tests. And that is what I'm addressing  
4                   mainly. Nor do we feel that there would be  
5                   damage anticipated in the full tests or  
6                   implementation, you know, based on what we  
7                   know now.

8                   The next item that we want to address  
9                   is the plan for the funding of additional  
10                  water treatment plans associated with the  
11                  enhanced levels of solids caused by the  
12                  spring rise.

13                 This kind of falls, both these  
14                 questions -- and when I address what we're  
15                 doing, at this point in time, we're  
16                 gathering data, getting information, as far  
17                 as having a plan, we're getting towards that  
18                 point where you have to have a certain  
19                 amount of information to be in a position to  
20                 develop a plan. Related to these two  
21                 things, they kind of tie into your suspended  
22                 sediment, you know, proposal that we have  
23                 received and we are reviewing.

24                 And at this time we have done, in the  
25                 last couple months, we have furthered out

1 research into that and have got our analysis  
2 to such a point that we are going to present  
3 it to the Project Review Board for the  
4 implementation regarding the BiOp and the  
5 process.

6 COL KURT F. UBBELOHDE: Again  
7 let me interject. This is again part of the  
8 hierarchal structure which exist in the  
9 Corps. What he's referring to is the  
10 district has responsibility for a portion,  
11 the division, the Project Review Board, as a  
12 higher level organization, which has  
13 responsibility for a much broader spectrum  
14 of issues.

15 And so this fits into their big  
16 picture, and they're the ones that will have  
17 a determination. So that's what he's  
18 referring to, the process right now.

19 BILL MILLER: Thank you, sir.

20 And we have -- Jody Farhat is here  
21 with provisions, and also Mr. Moore. And I  
22 am going to, with your permission, address  
23 these in total; but I want to stress that  
24 the mini tests, with the movement of the  
25 full tests under the umbrella of the RDEIS

1           for the Master Manual, I no longer manage  
2           that. I'm still doing the technical  
3           activities, you know, the testing of the  
4           spillway, the coordination of the Tribes  
5           for, you know, the cultural resources. I'm  
6           forming more tasks now for the division.  
7           But the management of it is with the  
8           Division. And also management and the  
9           comments on the stock protocol, I'm in the  
10          same function. I may provide footwork for  
11          that, gather that for them; but they are the  
12          ones that would speak to those two issues.  
13          I will address them together.

14                 And, Jody, any time you feel you want  
15          to add something, jump right in.

16                 Moving on to the next item on the  
17          list is the plan for protection, mitigation,  
18          replacement, and associated financing of  
19          existing intake sites along the Missouri  
20          River within the Fort Peck Indian  
21          Reservation for the Fort Peck Irrigation  
22          Project and other private intakes and newly  
23          proposed intakes.

24                 As the Tribe is aware of, because  
25          they were part of the process, we have

1           contracted with the Roosevelt County Natural  
2           Resource Commission for this study, for  
3           study of the intakes along the whole reach  
4           of the Missouri River in Montana. And that  
5           study has been completed. We have not  
6           received our final copy.

7                     We have received drafts of the  
8           summary. And some of our technical staff  
9           have received the internal stuff. Becky  
10          Latka has looked at it and put together her  
11          environmental assessment, but I have not  
12          seen or reviewed the final report.

13                    But we have collected that data and  
14          also addressed the tribal intakes, as well  
15          as all intakes in Montana.

16                    Also as a part of that, we are -- we  
17          will do, as a part of the mini tests and as  
18          a part of the full tests, we will refine the  
19          weather profiles for the river. To do that,  
20          we have to have a stabilized flow.

21                    There was discussion among the  
22          communities about doing it this summer, but  
23          it would have caused us about seven-tenths  
24          of water out of the lake that was already  
25          depleted. It was a joint State-Corps

1 decision it was best to wait and do it as  
2 part of a mini test.

3 And so we will make that  
4 determination at the 15,000 level. And  
5 then, once again, if we do the full test, we  
6 would make it 23,000 CFS level and establish  
7 new after profiles. The water profiles  
8 we're currently using are reasonable for  
9 estimates, but they were prior to the 1997  
10 event, which quite possibly made some  
11 changes to the dynamics of the river, which  
12 may not make them as accurate as they were  
13 at one time.

14 So that, coupled with the data that's  
15 available from the Roosevelt County survey  
16 should provide reasonable information.

17 The next item is analysis of the  
18 impact of future operations on erosion of  
19 the north bank, including maps (GIS) of the  
20 Missouri River Valley outlining soil types,  
21 geologic anomalies and other factors  
22 relevant to erosion.

23 At this time we have added three  
24 additional erosion monitoring sites with new  
25 mechanisms that geotechnical people

1 purchased about a year and a half ago.

2 On one of our first sets of scoping  
3 meetings on the mini tests and full tests we  
4 asked for volunteers because we had to have  
5 permission to put them in people's sites.  
6 And three volunteers came forward that had  
7 active erosion sites, and that's where they  
8 are located now.

9 This is in addition to our normal  
10 erosion monitoring that occurs just at the  
11 sedimentation monitoring lines. At certain  
12 periodic times they're resurveyed, and we  
13 also have aerial photos flown of the river  
14 that compares over a series of years which  
15 monitor the erosion rates.

16 It is still the Corps' position that  
17 overall the mini tests, the full tests, and  
18 the implementation taken as a whole will not  
19 affect the erosion rates over a long period  
20 of time.

21 But because there's still some  
22 concern among the Tribes and the public,  
23 we've went ahead and added these additional  
24 erosion sites.

25 The other thing ----

1 COL KURT F. UBBELOHDE:

2 Monitoring sites?

3 BILL MILLER: Monitoring sites,  
4 yes. Thank you, sir.

5 The other thing that has taken  
6 place -- we work jointly as a part of  
7 this -- is the NRCS with their ag research  
8 center has performed some independent soil  
9 stability type of tests in conjunction with  
10 the same place that the Corps has sites and  
11 tests and has compiled a report that they  
12 have provided to your CRM group. And the  
13 Tribes have tribal interests represented in  
14 that association.

15 In addition to that, as was mentioned  
16 in earlier testimony, the Corps under  
17 Section 33 has sponsored an ice study that  
18 did a very detailed look at the operations  
19 of the river under while it was covered with  
20 ice. And that report has been brief. We  
21 have not put out a report. Our overall plan  
22 was to do several years of monitoring to  
23 develop a profile.

24 We have one year of data, and we  
25 would have liked to have more data before we

1           came to, you know, a concrete conclusion of  
2           what it is. But the representation of the  
3           preliminary data was accurate.

4                     The next item is the plan for  
5           compensation of landowners for erosion. At  
6           this time, the best mechanism that is  
7           available for landowners to address erosion  
8           is the Section 33 program.

9                     One of the mechanisms is for the  
10          landowners, if they are willing, they can  
11          get a slough easement where the Corps would  
12          provide payment for an easement to let the  
13          land that was eroding continue to erode.

14                    There is possibility that certain  
15          criteria can be met for the four-banks  
16          stabilization project to be built. One was  
17          built, I believe at the Pipal site here  
18          in -- not far from here in Montana. Another  
19          site is being considered across from the --  
20          directly across from the spillway at this  
21          time.

22                    COL KURT F. UBBELOHDE: Let me  
23          just make a point of clarification.

24                    That particular determination, again  
25          to show you the hierarchy of the

1 organization, resides outside of the Corps  
2 of Engineers. It's at the Secretary of the  
3 Army Level, and it's done on a not  
4 economically justifiable basis.

5 So where we would be restrained to  
6 pursuing actions that are economically  
7 supportable, that sort of decision would be  
8 one that would be handled well above our  
9 rank and pay structure and is not -- It's  
10 for completely different sorts of reasons,  
11 so there's different motivation for a  
12 structural report.

13 DEB MADISON: Construction in  
14 the river intakes. So you think that  
15 somehow that base stabilization with prior  
16 tests for that area is kind of where this is  
17 going to head to, or not?

18 BILL MILLER: It's a separate  
19 program. It's a whole separate thing. I  
20 had managed that program one time. I think  
21 it's got a very set criteria. And up till  
22 now several people applied, and there's only  
23 been three structures built under that  
24 program at this time. So it has to be a  
25 very unique set of conditions for this to

1 occur.

2 COL KURT F. UBBELOHDE: Do you  
3 have anything to add on that, Alan? Do you  
4 have any prospective on that at all?

5 ALAN STEINLEY: No.

6 BILL MILLER: I'm not currently  
7 managing that project, but it is my belief  
8 that the consideration for the site as it  
9 falls from the spillway was based on a  
10 provision that allows you to relocate your  
11 water intake. In other words, we would  
12 relocate water intakes. If there's two  
13 water intakes that are close together, one  
14 stable, one not, and if a willing neighbor  
15 has a site he's willing to give easement, we  
16 would try to relocate the site so both pumps  
17 were at the stable site.

18 In that process if it's cheaper for  
19 us to actually do a structure and we can get  
20 the permits than to relocate it, then we  
21 would possibly build some limited rock  
22 structure. But once again, those are  
23 very -- the situation has to exist for those  
24 to be supported. It usually does not occur,  
25 and then we still have to get permits.



1           us a lot. The mini test is basically no  
2           more than 15,000. It's at the upper level,  
3           but it is a type of flow that would be in  
4           the normal operation range. And I do not  
5           believe that it is as big a concern to the  
6           Tribes or the landowners. And once we run  
7           that mini tests, then I think a lot of these  
8           other questions will fall into place.

9                     Do you want me to continue on, sir?

10                    COL KURT F. UBBELOHDE: Sure.

11                    BILL MILLER: Plan for safety  
12           during the testing and future operations,  
13           including assessment of the spill to perform  
14           properly.

15                    We have -- As a part of our  
16           operations, one of our tasks was to develop  
17           a safety plan as a part of our overall  
18           testing plan. And a draft of that has been  
19           put together.

20                    Given that, we are probably at a  
21           25 -- 15 percent chance of the test being  
22           implemented this year. We're still moving  
23           forward in the event that the water  
24           conditions will change that we could run a  
25           mini test.

1                   A draft is existing, but it is not  
2                   being pushed at this time, given the  
3                   probabilities. If things start to change,  
4                   we can finalize that document in a short  
5                   period of time. It addresses the type of  
6                   issues that you're concerned with.

7                   Regarding the spillway as a part of  
8                   previous contracts, we've already  
9                   completed -- with an engineering consultant,  
10                  we have developed an overall plan for  
11                  monitoring the spillway to use in the mini  
12                  test and the full test flows regarding the  
13                  erosion around the structure. And slab  
14                  uplift and instrumentation has already been  
15                  installed. Later this year, we will execute  
16                  another contract with the same consultant to  
17                  do some preliminary work. And so they're in  
18                  line to actually do the testing during the  
19                  full testing analysis.

20                  The next item is the plan for  
21                  protection of human remains, cultural,  
22                  historical, and archaeological resources.

23                  As you're well aware, the Tribe  
24                  has -- we award the contract to the Tribe to  
25                  do the cultural resource work on both sides

1 of the river from Fort Peck to the  
2 government boundary. And as it was  
3 previously briefed in the earlier  
4 testimony ----

5 (Brief interruption.)

6 BILL MILLER: I'll start over.  
7 Obviously the Tribe has a contract for the  
8 cultural resource inventory, and they also  
9 have the contract for some preliminary work  
10 we did on cottonwood surveys inventory. The  
11 contract is moving along. As Tom earlier  
12 briefed, the Tribes and the Corps have some  
13 landowners that are reluctant to give  
14 permission for the inner-land survey.

15 Discounting those areas, when the  
16 survey is completed, I anticipate sometime  
17 in the May-June timeframe, we will have hard  
18 data on the location of the cultural sites.

19 What we are anticipating is having  
20 some sort of monitoring program, say, if  
21 there are significant sites, you know,  
22 during the full tests. And once again those  
23 from the Division that are here, speak up if  
24 you don't agree, to insure that, you know,  
25 if there are significant sites that are

1 close, that we do not have impact to those  
2 sites.

3 It must be noted, at the current time  
4 we don't expect erosion rates being  
5 different than they are now. At this time  
6 we are not -- we don't know of any known  
7 occurrences. There's no known immediate  
8 problem sites. And erosion, if it stays at  
9 the current rate, doesn't seem to be causing  
10 a problem. So we wouldn't anticipate any  
11 difference during the mini tests or full  
12 tests.

13 If we would get water, we would  
14 probably propose to move forward with the  
15 mini test based on our current existing  
16 knowledge and monitoring plan.

17 The next item is the plan for  
18 baseline measurements and future monitoring  
19 of resources including water quality, total  
20 sediments, aquatic habitat, riparian habitat  
21 and other resources.

22 Yes, Tom.

23 TOM ESCAISEGA: Can you back up  
24 to that last one?

25 BILL MILLER: Yes.

1 TOM ESCAISEGA: On the  
2 cottonwood study, now we completed that?

3 BILL MILLER: Correct.

4 TOM ESCAISEGA: Can we expect  
5 some comments back from the Corps on that or  
6 do we have to wait until the whole project  
7 is completed, until like May or June?

8 BILL MILLER: I'll check on  
9 that. A lot of times we wait until the  
10 whole project -- in fact, if you haven't  
11 heard a comment, it's probably a good thing.  
12 We're probably happy with the work. But  
13 I'll check on that.

14 TOM ESCAISEGA: Okay.

15 BILL MILLER: We are still  
16 debating that within the Corps technical  
17 family.

18 DEB MADISON: We can expect  
19 some sort of response?

20 BILL MILLER: After we  
21 presented -- Portions of that debate would  
22 be presented to the review group that I  
23 mentioned earlier, and they would, they're  
24 responses to the different analysis that we  
25 performed would lend towards whatever the

1 response is.

2 DEB MADISON: Okay.

3 BILL MILLER: Ready to move on?

4 DEB MADISON: Yes.

5 BILL MILLER: Once again, the  
6 Tribes have been a part of all this, so this  
7 isn't new thing I'm telling you. We have  
8 a very aggressive, I think, detailed  
9 monitoring plan for the biological responses  
10 that we completed last year, and we would do  
11 this year. It would be done -- All the base  
12 years until we do the mini tests, during the  
13 mini tests, during the full test, during  
14 implementation then a year after is our base  
15 plan.

16 And we're collecting the type of  
17 information on water quality, on  
18 temperature, a limited amount of humidity.  
19 We are collecting a multitude of information  
20 on the movement and the habit of the fish  
21 and the pallid. And that is a part of our  
22 monitoring plan. We also have completed the  
23 cottonwood study.

24 Now, it goes back to the information  
25 that we have at hand that erosion will not

1           increase at a rate other than normal as far  
2           as the effect of the mini test and the full  
3           test, that there is -- other than the work  
4           that you have done, we consider that kind of  
5           our monitoring plan. There is no other  
6           additional monitoring that we see that would  
7           occur actually during the tests, as far as  
8           what would happen to this data. And when  
9           you talk in terms of baseline, data  
10          collected over a year is not a baseline.  
11          That's probably the next phase.

12                 I would like to get together with  
13          Deb, talk to you after the meeting. I  
14          believe the Tribes have a previous long  
15          history of water temperature, water quality  
16          data, and we'd like to talk with you, if we  
17          could, to try to make some sort of  
18          connection match up to our data and use that  
19          to extend the baseline.

20                 And so we go to the Tribes which  
21          probably have some of the best data and some  
22          other agencies and see if we can use that  
23          data to develop the baseline.

24                 And once again, the sediment portion  
25          of this, your monitoring plan would be tied

1 to, you know, the comment that we receive  
2 from our senior review group.

3 The last item that I have on this  
4 list is the analysis and presentation of  
5 benefits of spring rise to Fort Peck  
6 Assiniboine and Sioux Tribes.

7 But the main benefit, I think the  
8 Tribes have had a long history of being  
9 concerned for the environment. And I  
10 believe that this whole process will improve  
11 the river habitat and especially the habitat  
12 and the chances of survival of the pallid  
13 sturgeon.

14 In addition to that, this process has  
15 made it possible for us to do a complete  
16 cultural resource survey of the river, which  
17 I think was another -- There's a lot of  
18 interest groups that that is a benefit to,  
19 but I think the Tribes have a primary  
20 interest in that particular action  
21 occurring, and the information being  
22 available has benefited the Tribes.

23 Even though our initial start is  
24 limited, the cottonwood survey work is of  
25 benefit to the Tribes. And even though it's

1 a secondhand benefit because it was for the  
2 benefit of the Corps to take the contract,  
3 there has been some contractual work that  
4 has provided income into the tribal  
5 community based on this process.

6 And the last abstract benefit is that  
7 both the mini and the full tests will  
8 provide a bank of data. In other words,  
9 adaptive management is based on having data  
10 seen, what happens there.

11 If you, in a part of the process,  
12 have some confidence in the data and you had  
13 data, then you can anticipate in the  
14 adaptive management process.

15 Those are all the comments I have.  
16 Were there any others you wanted to address,  
17 Tom, on this list?

18 TOM ESCAISEGA: One of the  
19 things that we're thinking is, what we need  
20 is a response in writing on this so we  
21 understand where we are. And we understand  
22 you're not totally complete with all the  
23 things that you're doing, but if you could  
24 respond to the things that you can respond  
25 to and give us a status report on your

1 projection when that will be finished, I  
2 think that would go a long ways in answering  
3 the questions that the Tribes will have  
4 posed in their correspondence.

5 And that would be very helpful to the  
6 Tribes in being able to evaluate what your  
7 plans are. Without that we really don't  
8 have much to work with. We've got the  
9 correspondence out there asking for those  
10 plans.

11 With regard to the baseline data  
12 collection, again, the oral statement given  
13 that there has been significant progress on  
14 some of the things in the report, aerial  
15 topography of the river to establish where  
16 the banks are, your cross sections of every  
17 mile that you maintain and update, that  
18 gives a good handle of where the river is at  
19 any particular point in time and where the  
20 bed is, X, Y, and Z coordinates, we're  
21 talking about the lateral position of the  
22 river and the vertical position of the bed,  
23 that gives a lot of good information.

24 So far we haven't seen that. We'd  
25 like to see it so that we can understand



1                   It would be sort of a comprehensive document  
2                   then addressing each of the points. Because  
3                   I know Mr. Elliott had asked about the  
4                   cottonwood study and expecting a response on  
5                   that. And that seems appropriate. We've  
6                   got the document. We should be doing the  
7                   review, the response back what it means,  
8                   etc., from our prospective, to roll all  
9                   those together in one comprehensive thing  
10                  for the Tribal Council to look at.

11                  Then you would be able to determine  
12                  whether you're satisfied, etc. That would  
13                  be appropriate.

14                  Okay. Any other directions for us,  
15                  comments?

16                  JOE ELLIOTT: I think from  
17                  my standpoint, I'd like to see an  
18                  organizational chart of you guys. You know,  
19                  you're talking about hierarchy. That would  
20                  help us to send letters.

21                  RICK MOORE: Did you have any  
22                  concerning the regulatory process? Did you  
23                  want to discuss them here?

24                  TOM ESCAISEGA: Yes. When we  
25                  start construction of our intake, which will

1 take place probably this fall, we need to  
2 know who to go to and get permits and stuff  
3 like that.

4 COL KURT F. UBBELOHDE: Okay.

5 RICK MOORE: He wants to go  
6 there to get a permit, Alan. Come right up  
7 in front.

8 COL KURT F. UBBELOHDE:

9 Introduce yourself, Alan.

10 ALAN STEINLEY: Hi, I'm Alan  
11 Steinley. I work out of Helena. We talked  
12 on the phone the other day. And I run the  
13 regulatory program here in Montana, and I  
14 didn't quite get your question.

15 TOM ESCAISEGA: I guess we need  
16 to know about the permits, who we need to  
17 know, who to work through. I'm not too  
18 sure.

19 ALAN STEINLEY: Okay. We've  
20 had some contact on that project back in  
21 March with the Bureau of Reclamation and  
22 DEQ. Are you working with them to put this  
23 project together? They informed us that  
24 they were taking care of environmental  
25 documentation at the state and federal

1 level.

2 TOM ESCAISEGA: Okay. We have  
3 the Fort Peck.

4 ALAN STEINLEY: Okay. So  
5 they're only handling the Dry Prairie part.  
6 I didn't catch on there. But what I think  
7 would probably be the prudent thing to do  
8 would be to get together on a pre-  
9 application basis probably as soon as  
10 possible and lay out the project and  
11 then we can discuss different permitting  
12 ramifications and what we could do for the  
13 process.

14 It would probably be an involved  
15 permit. There will be a lot of issues that  
16 have to be dealt with and some of those have  
17 been discussed today, railroad, cultural  
18 resources, and I assume -- Will the Tribes  
19 be handling a lot of those types of issues  
20 in review?

21 TOM ESCAISEGA: Yes.

22 ALAN STEINLEY: Okay. That  
23 will help.

24 Probably one of the issues that we'll  
25 have to look at is how much of this project

1 are we going to try to run off of a permit.  
2 And I'm not quite sure where you're at in  
3 the planning or construction.

4 One of the things we'll have to  
5 determine is: Can we permit the intake  
6 separately or are we going to have to look  
7 at the permit of the delivery system  
8 together.

9 And I think that's something that we  
10 need to do, like I say, pre-application  
11 consultation to find out where you're at on  
12 this project, where you're at on design.  
13 Then we'll probably be able to get you a  
14 better answer as to what type of permitting  
15 requirements you'll be looking at, and more  
16 importantly probably how long it's going to  
17 take before we can provide a permit to you.

18 COL KURT F. UBBELOHDE: To help  
19 him understand, what would be some of the  
20 restrictions or limitations on that  
21 particular matter and time on this issue,  
22 just to kind of characterize it for them?

23 ALAN STEINLEY: Well,  
24 determining the scope of the project, like I  
25 said, how much the project we're going to

1 try to bite off. I think I heard you say  
2 you want to start construction in the fall?

3 TOM ESCAISEGA: Right. The  
4 intake.

5 ALAN STEINLEY: Okay. We'll  
6 have to decide how much of the project is  
7 available to evaluate, basically, and how  
8 much of it -- So we'll have to determine the  
9 scope of the project.

10 And then there will be the typical  
11 issues, the endangered species, cultural  
12 resources. Those are normally the ones that  
13 add length to the process. If we have to go  
14 into consultation with Fish & Wildlife,  
15 they're kind of a wild card process, as I'm  
16 sure you're aware. And it could -- It's out  
17 of our control basically how long it takes  
18 sometimes.

19 So as we deal with those types of  
20 issues, I would recommend getting started as  
21 soon as we can. Because, like I say, we  
22 don't really have control on how long some  
23 of that takes.

24 TOM ESCAISEGA: The only thing  
25 we'd be interest in permitting is the

1 intake.

2 ALAN STEINLEY: Okay. And  
3 that's a decision we'll have to make. When  
4 we were talking with the Bureau and DEQ  
5 on -- This is quite a network, the pipeline  
6 that goes along with this thing, crossing  
7 many waters of the United States. And we  
8 wouldn't have the pipelines without the  
9 intake.

10 Normally we like to look at the  
11 entire scope of the project at one time and  
12 evaluate the impact and put out our  
13 information to the public for comment, as  
14 much of the project as we can. But I  
15 understand some of that information isn't  
16 going to be available.

17 TOM ESCAISEGA: We've got  
18 everything available. We know the streams  
19 we're crossing, where we're crossing. All  
20 of the details are going to change, but the  
21 general nature, the general scope of the  
22 project is not going to change.

23 ALAN STEINLEY: I think we can  
24 work with that. Because when the time  
25 comes, if we need to amend the permit to

1 recognize the change in the crossing  
2 locations, that's not a problem.

3 JOE ELLIOTT: Well, yeah.  
4 We've addressed that in considerable detail.  
5 What we've done there, there was individual  
6 permits in South Dakota for permits more  
7 nation-wide. As this has been going along,  
8 we've done a detailed site specific  
9 assessment of wetlands before each segment  
10 is built. Because when we did our surveys,  
11 we weren't sure where the pipes were going  
12 to be, so we did a specific site survey  
13 before applying for each segment as it was  
14 built.

15 ALAN STEINLEY: Okay. And  
16 they're handling some of those?

17 JOE ELLIOTT: Right. Right.  
18 But the main ones you can handle the  
19 separate individual permits.

20 ALAN STEINLEY: Separate  
21 individual permits?

22 JOE ELLIOTT: Yes.

23 ALAN STEINLEY: Okay.

24 JOE ELLIOTT: Yes. We've done,  
25 you know, quite a bit of field work, but

1           it's difficult. From one side of the road  
2           to the other, it can be very different when  
3           you're looking at wetlands, particularly on  
4           the uphill side of the wetlands.

5                        So we can address it adequately for  
6           complying, but probably not adequately for,  
7           you know, to determine, depending on what  
8           your needs are. Sometimes that's adequate  
9           for nation-wide permits.

10                      ALAN STEINLEY: Yes.

11                      JOE ELLIOTT: But we have a lot  
12           of information which we can provide you,  
13           which we probably should do that. I was  
14           assuming that the Bureau of Reclamation was  
15           keeping you in the loop on this, but that  
16           apparently isn't the situation.

17                      ALAN STEINLEY: I haven't spoke  
18           to them since March. And our Billings  
19           office wants to be the project manager for  
20           the 404 program.

21                      JOE ELLIOTT: Should I sent  
22           information to you or to him?

23                      ALAN STEINLEY: Send it -- I  
24           think for this project, send it to me. Then  
25           I'll route it to Larry.

1                               JOE ELLIOTT: Okay. I'll start  
2                               sending you stuff then.

3                               ALAN STEINLEY: And I talked  
4                               with the District a little bit, my  
5                               counterparts down in Omaha. And I think  
6                               once we get into some of the smaller lines  
7                               and some of the case-by-case exact  
8                               locations, we probably have the option of  
9                               going either way, either individual permits  
10                              or nation-wide permits.

11                             But we have flexibility on this. But  
12                             I would encourage you, we should probably  
13                             get the process rolling as soon as we can.  
14                             Because an individual permit can take awhile  
15                             anyway. And then because there are some  
16                             wild cards that we don't have any control  
17                             over, I think we should just get -- If we  
18                             want to meet your construction schedule, we  
19                             should probably get rolling.

20                             TOM ESCAISEGA: The first train  
21                             crossing will be 2004. That will be a  
22                             crossing in Poplar.

23                             ALAN STEINLEY: Okay. I would  
24                             definitely start consultation on that.  
25                             Maybe the best thing to do would be to come

1 back up here, have Larry come up and talk it  
2 over on a pre-application basis. And then  
3 maybe even get -- see what their needs or  
4 requirements are going to be, Fish &  
5 Wildlife.

6 JOE ELLIOTT: Right. We've had  
7 Rob getting them involved, but they need to  
8 be requested officially for their  
9 participation.

10 ALAN STEINLEY: Okay.  
11 Requested by whom?

12 JOE ELLIOTT: The Bureau of  
13 Reclamation. Or in our case, you can do it.  
14 You're another government agency, but I'm  
15 not a designated representative.

16 ALAN STEINLEY: Okay.

17 JOE ELLIOTT: So it's got  
18 to be from either you or the Bureau of  
19 Reclamation.

20 ALAN STEINLEY: Okay. So you  
21 can negotiate or consult directly with them.

22 JOE ELLIOTT: Well, we would  
23 consult -- We have to be designated as the  
24 representative, and we're not at this point.

25 ALAN STEINLEY: Okay.

1                   JOE ELLIOTT:  If the Bureau of  
2                   Reclamation maintains that themselves, but  
3                   they haven't made contact to any great  
4                   extent with the Fish & Wildlife Service.

5                   ALAN STEINLEY:  Okay.  Maybe  
6                   you folks can help me.  What's the  
7                   connection of the Bureau to your project?

8                   JOE ELLIOTT:  They're the  
9                   federal lead agency writing the documents.

10                  ALAN STEINLEY:  So they are  
11                  involved in the Fort Peck work, as well?

12                  JOE ELLIOTT:  Yes.

13                  ALAN STEINLEY:  Okay.  Well, in  
14                  that case, I'm sorry, I thought you were  
15                  saying earlier that they were not involved  
16                  in the Fort Peck project.  And if they are,  
17                  then ----

18                  JOE ELLIOTT:  No.  They're  
19                  involved in the Fort Peck project.

20                  ALAN STEINLEY:  All right.

21                  JOE ELLIOTT:  They're the lead  
22                  federal agency at this point.

23                  ALAN STEINLEY:  Good.  Then  
24                  they'll be responsible.

25                  JOE ELLIOTT:  I was actually

1 looking for somebody else that might be able  
2 to use a little government leverage to get  
3 the Fish & Wildlife Service involved.

4 ALAN STEINLEY: Yes. And I'd  
5 be glad to talk to the folks in Helena about  
6 who they would designate or if they're going  
7 to need help.

8 JOE ELLIOTT: They've  
9 designated a guy in Billings, but he's so  
10 overwhelmed that he can't really handle it.  
11 And the guys in Bismarck have volunteered  
12 very willingly to participate.

13 ALAN STEINLEY: Okay.

14 JOE ELLIOTT: And we've been  
15 really pushing for this to get them  
16 involved. We've had a lot of trouble  
17 getting it moving.

18 ALAN STEINLEY: Okay. Would  
19 you like me to inquire where they're at?

20 JOE ELLIOTT: Absolutely.

21 ALAN STEINLEY: Okay. Is there  
22 anything else? I'm not sure I answered all  
23 your questions.

24 COL KURT F. UBBELOHDE: Thanks,  
25 Alan.

1                   Are there any other issues that we  
2                   want to discuss further.

3                   TOM ESCAISEGA: No, I guess  
4                   that's it.

5                   COL KURT F. UBBELOHDE: Just as  
6                   a way of a recap, then, the Corps, we will  
7                   pull together as quickly as we can, a  
8                   response which addresses the various issues.  
9                   And one of the things ----

10                  DEB MADISON: I have one  
11                  request.

12                  COL KURT F. UBBELOHDE: Okay.

13                  DEB MADISON: Can we get  
14                  diagrams through the winter months? We've  
15                  got it from April through June, but there  
16                  isn't one in the RDEIS for July through  
17                  March.

18                  COL KURT F. UBBELOHDE: Flow  
19                  Diagram 1528 for the winter months.

20                  DEB MADISON: Yes. The release  
21                  is from the dam, from Fort Peck.

22                  COL KURT F. UBBELOHDE: The  
23                  release. In the 1528 model.

24                  DEB MADISON: July through  
25                  March. You have April, May and June.

1 COL KURT F. UBBELOHDE: Okay.

2 RICK MOORE: But those releases  
3 are only for, what, a three-week period,  
4 Jody, the 1528 releases, 15 in the spring --  
5 15,000?

6 JODY FARHAT: What are they,  
7 monthly releases?

8 COL KURT F. UBBELOHDE: From  
9 Fort Peck.

10 JODY FARHAT: Releases from  
11 Fort Peck Dam, the ones that aren't in there  
12 now?

13 DEB MADISON: Yes.

14 COL KURT F. UBBELOHDE: Okay.  
15 Thank you very much for the opportunity.

16 (Whereupon, the proceedings  
17 were concluded at 1:45 p.m.)

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## HISTORIC PROPERTIES

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

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

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

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

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

## CONCLUSION

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