

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
GREAT PLAINS REGION
DAKOTAS AREA OFFICE

Northwest Area Water Supply
Project Draft Environmental
Impact Statement on Water
Treatment

TRANSCRIPT OF
PUBLIC HEARING

Taken At
Four Bears Casino
202 Frontage Road
New Town, North Dakota
February 7, 2008

BEFORE MR. MARK ANDERSON
-- HEARING OFFICER --

C O N T E N T S

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1 (The proceedings herein were had and made
2 of record, commencing at 7:06 p.m., Thursday,
3 February 7, 2008, as follows:)

4 (Presentation given by Alicia Waters.)

5 MR. ANDERSON: Good evening, ladies and
6 gentlemen. This will commence the official public
7 hearing portion of the evening. I will call those
8 who have signed up to offer testimony, I will call
9 you one by one and ask that you come up, when you
10 come up, if you would state your name. We do have
11 a court reporter recording the testimony here this
12 evening.

13 As Alicia indicated, you may submit your
14 testimony orally this evening, you may record it
15 and submit it on a piece of paper, or you can send
16 it in later. All forms of input have equal weight.

17 So first this evening, again, if you would
18 come up and use the podium and state your name and
19 any affiliation. First we have Felicia Felix,
20 representing the Three Affiliated Tribes.

21 MS. FELIX: Good evening. My name is
22 Felicia Felix. I work with the Fort Berthold Rural
23 Water Office and this evening I am representing the
24 Three Affiliated Tribes.

25 I do have a prepared statement, so excuse

1 me if I get a little shook. I just want to thank
2 you again for the opportunity to provide additional
3 comments on the draft environmental impact
4 statement regarding the Bureau of Reclamation's
5 proposed Northwest Area Water Supply Project.

6 The Bureau's proposal is of extreme
7 importance and concern to the Three Affiliated
8 Tribes for a number of reasons. The previous
9 comments provided by the Three Affiliated Tribes
10 during the scoping period of the EIS have been
11 addressed in this draft environmental impact
12 statement. However, the final EIS must ensure the
13 necessary steps are taken to respond to the impacts
14 and concerns of the Tribes.

15 The Three Affiliated Tribes maintains and
16 reasserts the same comments for the draft EIS that
17 were previously submitted on behalf of the Tribes.
18 Those comments are specifically as follows: Water
19 rights. The Three Affiliated Tribes has reserved
20 water rights to the Missouri River under the
21 Winters Doctrine, which has not been quantified and
22 has established preexisting uses, specifically,
23 traditional and cultural uses that will be affected
24 by the NAWS project. The Tribes' reserved water
25 rights must be considered and protected under this

1 proposed action.

2 The second one, Missouri River depletion.
3 The Three Affiliated Tribes depends on Lake
4 Sakakawea as its primary potable water source and
5 needs assurance that the water will be available
6 for the immediate and future needs. The Tribes
7 recognize that there will be an economic benefit
8 with NAWS construction. However, the Tribes'
9 ongoing needs must be considered and addressed
10 especially in light of the Winters Doctrine and
11 should take precedence over any considerations.
12 The Tribe is entitled to know how this action --
13 how the proposed action will affect its needs.

14 Third, the funding expended. The funds
15 that have been expended for the completion of NAWS
16 must be clearly explained. Expended funding and
17 the amount should be analyzed from -- through the
18 years of 1987 to 2008, a span of 20 years, in light
19 of the following -- I think Alicia clearly stated
20 the different things that happened.

21 I also have summarized that the project
22 was authorized in 1986. The State Water Commission
23 initiated the project in 1987, and based on the EIS
24 environmental, the FONSI was approved in 2001.
25 Construction on the main water lines also began in

1 the spring of 2002. In the fall of 2002, the
2 Canadian Province of Manitoba filed a lawsuit
3 against the Department of Interior. In February
4 2005, the Court ordered U.S. Bureau of Reclamation
5 to revisit the FONSI and to further relook at the
6 environmental analysis.

7 A second ruling from the Court in 2005
8 denied the request for an injunction on the
9 construction and only allowing the construction
10 contracts to continue. In 2006, Reclamation began
11 a public hearing process with the public
12 organizations and government agencies with a wide
13 variety of methods to learn about the development
14 of the EIS. Through that scoping process, there
15 were six meetings held throughout the State of
16 North Dakota. To date now there are four
17 alternatives that are being evaluated, no action,
18 basic treatment, conventional treatment and
19 microfiltration. Question of the cost of these
20 alternatives for construction and the annual O&M,
21 and to date Reclamation has not identified a
22 preferred alternative until the final EIS.

23 Another comment is because of the amount
24 of funding that has been expended on this project
25 may include federal, state and local funding, that

1 the long-term effects of the O&M costs will affect
2 the Three Affiliated Tribes while competed for
3 Dakota water appropriations from Congress.

4 It is understood that the necessary
5 environmental work must be completed to comply with
6 the federal regulations. However, the proposed
7 actions will result in some environmental impacts
8 to the Three Affiliated Tribes, its rights, lands
9 and owners.

10 Finally, the question needs to be
11 addressed about how can the Bureau of Reclamation
12 determine that some of the issues, specifically
13 Missouri River water depletion, is outside of the
14 scope when NAWS's water source is the Missouri
15 River or Lake Sakakawea.

16 And, again, I just want to thank you for
17 the opportunity for me to comment and to provide a
18 legitimate concern on this proposed action. We
19 trust our concerns will be taken into consideration
20 and addressed accordingly. Thank you.

21 MR. ANDERSON: Thank you. The next
22 speaker is Alan Walter, representing the City of
23 Minot.

24 MR. WALTER: I'm Alan Walter, director of
25 public works for the City of Minot. I'm here

1 representing the City of Minot and speaking in
2 favor of the NAWS project.

3 In the EIS they're talking about any one
4 of the options for treatment of the water having
5 low to very low difference in the biota transfer
6 from one drainage basin to the other. During the
7 course of the environmental assessment for the
8 first study that was done on this, there was a
9 biota transfer study done that resulted with the
10 number for measuring the difference in transfer of
11 biota over what is happening currently with the
12 natural things, the birds flying across the divide,
13 boats going across the divide, fishermen going
14 across the divide, all the actions that are taking
15 place today without the project, and that number
16 was identified as either zero point and then 15
17 zeros and a 19 or zero point 19 zeros and a 15.
18 And I don't remember which one of those two numbers
19 it was, but that was the change that would be in
20 transfer of biota over what is happening now with
21 the project in place.

22 The concern of the depletion of the
23 Missouri River based on the draw of water for the
24 NAWS project has been stated in the EIS as not
25 measurable. So the amount of water we're taking

1 out of the Missouri River either above the dam, in
2 the lake, is not measurable or downstream from the
3 dam, in the river, is not measurable. In other
4 words, the amount of water we're taking out of
5 there is not going to have any effect on the amount
6 of water in the lake or in the river.

7 We are in favor -- the City of Minot is in
8 favor of the lowest cost option. That will have
9 the lowest operation and maintenance cost and will
10 not affect then -- or will have a minimal effect
11 then on the moneys that the Bureau has for the
12 other projects that are in the MR&I program,
13 including the tribal MR&I programs.

14 I thank you for this opportunity for
15 speaking tonight and I thank you for having a
16 hearing here at Four Bears.

17 MR. ANDERSON: Thank you. I just have one
18 additional person that has signed up to speak. If
19 any of you are thinking about it, I will ask at the
20 conclusion of these remarks if there are any that
21 would like to add testimony. The next speaker is
22 Bob Schempp, representing the NAWS Advisory
23 Committee.

24 MR. SCHEMPP: I'm Bob Schempp. I'm here
25 appearing on behalf of the NAWS Advisory Committee.

1 It's great to see Felicia. She and I go back 20
2 years to the Naegeehuun water project, and so it's
3 great to be here in Four Bears.

4 The draft EIS is a very comprehensive and
5 well-written document which presents treatment
6 alternatives and comparisons of biota transfer
7 pathways and which describes and clarifies the
8 relative risk of biota transfer to Canadian waters.
9 According to the draft, the design features and
10 operational measures which are involved in the NAWS
11 project provide a very low risk of biota transfer.
12 And the report does say, as Alan just said, that
13 there's a much higher risk of biota transfer from
14 non-project pathways than from the project, itself.
15 So the risk of transfer of biota from NAWS is low,
16 and the risk of transfer from outside pathways is
17 high.

18 The draft EIS, as was stated, lists four
19 alternatives, and the NAWS Advisory Committee is
20 very much in favor of what is called the No Action
21 Alternative. We consider it to be the logical
22 alternative for construction. They're making that
23 recommendation because they think the No Action
24 alternative is based on effectiveness, will give an
25 effective result, the relative risk of biota

1 transfer is low, and the cost to the United States
2 is also relatively low.

3 The draft also addresses concerns about
4 adverse impact upon the level of Lake Sakakawea
5 which might be caused by NAWS usage of its 15,000
6 acre-foot water permit. The final environmental
7 assessment concluded that, and I quote, The
8 incremental effect of the NAWS withdrawal will not
9 be measurable.

10 The day before yesterday in The Minot
11 Daily News they reported, as they do always, on the
12 amount of releases from the Garrison Reservoir. On
13 Monday -- the previous Monday, there were 30,000
14 acre-feet released from the reservoir. That's a
15 two-year supply of NAWS water. And the amount of
16 change in the elevation last Monday was zero. So
17 in that particular instance there was no measurable
18 impact on the release of 30,000 acre-feet of water,
19 a two-year supply. So when Mr. Walter says it's
20 not measurable and the impact statement says it's
21 not measurable, of course, it's measurable. It
22 won't be noticed because of the size of the
23 reservoir, 365,000 acres of water when the pool
24 level is normal. So our withdrawal and your
25 withdrawal as Tribes should be guaranteed. If the

1 reservoir stays at its present level, we should
2 have no concern, and I'm convinced that we must be
3 convinced there's no concern, and I'm absolutely
4 convinced that the NAWS project will not affect the
5 level of the reservoir.

6 In 1972, the City of Minot and the Bureau
7 of Reclamation approved an interim water supply
8 agreement for construction of a transmission line
9 to the Sindre Aquifer, which is a large aquifer
10 southeast of Minot. That system was designed to
11 eventually connect to an irrigation canal and a
12 manmade lake which was part of the original
13 Garrison diversion unit. And now 36 years later,
14 we are nearing the completion of that agreement,
15 one that I had the privilege to cosign, although by
16 a very different -- a vastly different method.

17 Completion of our agreement, the agreement
18 between the City of Minot and the Bureau, will
19 benefit more than 60,000 residents of north central
20 North Dakota. The project will not have any effect
21 upon the environment of Canada or North Dakota. It
22 will benefit the citizens of north central North
23 Dakota. Our committee asks that you complete the
24 EIS, that a doable record of decision be issued and
25 that construction begin as soon as possible. And

1 our Advisory Committee is getting weary of giving
2 advice. We would look forward to helping turn the
3 tap on the project.

4 Again, thank you for a job well done on
5 the draft EIS and thank you for the opportunity of
6 being here on behalf of the NAWS Advisory Committee
7 on the Northwest Area Water Supply Project.

8 MR. ANDERSON: Would anyone else like to
9 give testimony? If you would come up, please, and
10 state your name for the court reporter. Thank you.

11 MR. CROWS BREAST: Good evening, ladies
12 and gentlemen. My name is Elgin Crows Breast. I
13 work for the Three Affiliated Tribes as a cultural
14 preservation officer for the Tribes. I have worked
15 in this capacity for, oh, a little over 22 years,
16 21 years. And my testimony is going to be in
17 regards to having enough water for the Three
18 Affiliated Tribes, the Mandan, Hidatsa and Arikara
19 Nation, and also concerning some of the cultural
20 resources that may be in the pathway of further
21 expansion of the NAWS project, which would probably
22 be to the northwest corner to all the cities out --
23 like Grenora, Fortuna and different ones because
24 that is quite a bit of water that is going to be
25 heading out of the lake here.

1 As you know, the Tribes have always had
2 longstanding inherent rights for water simply
3 because we were here first, you know, bottom line.
4 So we want to protect those two treaties, and our
5 treaty lands -- aboriginal territories, let's put
6 it like that, have extended up far into the Devils
7 Lake area and through -- as far west as the Powder
8 River and down as far to the Black Hills, so we
9 covered quite extensive.

10 But the genesis stories of our Tribes have
11 always been water people. We have always lived
12 along the Missouri, Mississippi from archeological
13 data through different areas, through the Gulf of
14 Mexico. Through our medicine bundles, which is
15 called a good fur robe bundle, tells of stories of
16 coming up 900 A.D. farther down in the Gulf of
17 Mexico up to what they call -- a place called St.
18 Louis and there's a place called Keokia. So we
19 have a vast area that we covered through the years
20 and we've always lived by the river. Not only
21 that, our culture is really important to the water.
22 Water to us is a life-giving force like to you, but
23 it has a spiritual significance for our Tribes and
24 we hold it most reverently because of the
25 spirituality of Tribes of our medicine bundles in

1 our stories that go along with the river.

2 So we have -- there's many things with
3 this water. Some of them I can't talk about, some
4 of them I can. I've seen people doctor with his
5 water, people with cancer, people that can't see,
6 using this water to help them get those things back
7 or eliminate a certain disease, and all the animals
8 that go in the water. There's a lot of things that
9 go along with that. As I was told and I learned
10 through the years from my elders -- maybe some of
11 you grew up during the Coleharbor days when it was
12 down by the river in Elbowoods. I never seen that,
13 but my grandparents tell me that there used to be a
14 lot of different kind of animals, a lot of medicine
15 plants.

16 So this water is really important, and
17 we're not against -- personally, we're not against
18 anybody getting water because you need it to live,
19 but the thing is that we want to make sure that
20 into future generations of our people, way -- a
21 hundred, two hundred years from now, that we're
22 going to have enough water because we're growing
23 steadily, and if we make a decision to change our
24 constitution here within the Tribe to lineate the
25 descendency, it would automatically include maybe

1 two, three hundred thousand people that have blood
2 of -- Indian blood that are maybe most white or
3 different relation to our Tribes that have maybe
4 just a small degree of Indian blood that will
5 become members of our Tribe and there our Tribe
6 grows.

7 So there's a lot of things we need to look
8 at, so we're concerned about those things and the
9 water that comes out of this river. It's being
10 piped down to Bowman. It's being used at the
11 gasification plants. They're talking about a
12 refinery. They're talking about diversion,
13 Garrison Diversion over to the Red River Valley up
14 into Canada. They're talking about -- there's
15 always damming up at the Maple River Dam. So water
16 is going to be a high-priced commodity, probably
17 even pricier than oil is, in the future here. So
18 we're looking out for the interests and I give this
19 testimony on behalf of the Three Affiliated Tribes
20 as the cultural preservation officer of the Tribes.

21 Let me give you some kind of insight, if
22 you can grasp it, of how much water means to our
23 people. So those are the things that we're
24 concerned about. I don't know the numbers. You
25 know, I couldn't tell you, but I know this, there's

1 been a lot of money made off this water, and we
2 haven't seen a dime. There's been a lot of
3 electricity made off this water and we haven't seen
4 a dime. But we are the first come, first serve
5 waterhole users, they call it senior water rights
6 users because we're here. Everybody else is junior
7 water rights users. So we look back, many
8 megawatts of power being generated for RECs who get
9 the power and divide it up, split it up, push off
10 electricity to all the people, they collect the
11 money, we don't see nothing, but yet it runs right
12 down the middle of our reservation. So some of
13 those things we think about, you know, and they're
14 on the verge of quantification maybe.

15 So there's a lot of things as people, as
16 human beings, Indian, nonIndian, whatever, that we
17 could all share, and one of them is economics. If
18 we could receive those economics from the water
19 going out of here. How do you justify paying water
20 to Tribes? You know, how would you do that? Some
21 of the questions that need to be answered as far as
22 the Tribes are concerned with the Missouri River.

23 So I say those things as a comment to the
24 nonIndian people that, you know, we do need some
25 type of compensation, not to say that, okay, we

1 paid you, okay, now you got your payment, now we're
2 going to take all the water we want. If we want to
3 quantify our water rights, then we can quantify it
4 the way we want to do it, and I would say in
5 percentages. The glass is always half empty or
6 half full all the time. Even if you got a drop,
7 you got half of that drop. That's the way I see
8 it. Not after you use so many million acre-feet,
9 now you have to pay for it, see. That's something
10 that -- I'm not a radical. I get along, I know the
11 Army Corps of Engineers, I work with them, the
12 Bureau of Land Management, on a lot of issues,
13 Endangered Species Act, environmental, you got the
14 piping plover, got the pallid sturgeon, you got all
15 these things that have an effect on this water
16 according to scientists, environmentalists, all
17 these things. So we've got to think about it.
18 There's a whole gamut of things that the Tribe
19 thinks about and we wonder.

20 So as a member of the Three Affiliated
21 Tribes, I would definitely like to see some kind of
22 agreement where we're going to get something out of
23 it, because we haven't seen one crying dime. You
24 know, it's all about money, you know, because once
25 you get the water in Minot, or wherever it's going

1 to go, they're going to pay for it, it's going to
2 be used -- hospitals, yeah, we all use those
3 things, we know that, but we have to start
4 somewhere. Somewhere we have to kind of right the
5 wrong, you know, that's been happening. Over the
6 years we haven't been receiving anything.

7 So those are some of the things I wanted
8 to bring up as a member and as the cultural
9 preservation officer. I work with Alicia Waters, I
10 believe we kind of keep close, she sends me
11 documents on reclamation on the NAWS project, so
12 there's a lot of things that we need to talk about
13 yet, you know. Yeah, I'm all for you guys getting
14 your water. I've got no problem with that,
15 everybody needs it to live. But, come on, look a
16 little bit to our way, we need something, you know,
17 and we're always getting the short end of the deal,
18 you know, bottom line.

19 So I just want to say that and I want to
20 thank everybody for coming here to the Four Bears
21 Casino and Lodge. If you can, drop a few quarters
22 out there, you might hit the jackpot, you never
23 know. Thank you very much.

24 MR. ANDERSON: Thank you. Is there anyone
25 else that would like to make a statement? If you

1 would come up, please, and also state your name for
2 the court reporter. Thank you.

3 MS. JOLETTA BIRD BEAR: Good evening. My
4 name is Joletta Bird Bear and I am a resident from
5 Mandaree. I am a member of the Three Affiliated
6 Tribes, the Mandan, the Hidatsa and the Arikara,
7 and I assert my rights to this water as a tribal
8 member of my tribal government. I do not have to
9 justify why I do that. As a member of my
10 government, I am protecting my rights and I am
11 protecting the rights of future generations that
12 are coming after me, just as my ancestors protected
13 it for me.

14 In response to what I saw this evening --
15 I participated in the earlier hearing a couple
16 years ago, and I will continue to be involved in
17 this process. One of the areas that I have a
18 concern about is the idea that we can consume water
19 without regard to future use or future demand and
20 that we tend -- not me, but the assumption is that
21 we don't have to be concerned about the future, we
22 should only be concerned about tomorrow, and that
23 is a major concern I have with the approach that is
24 being taken in this project.

25 Where is the importance of conservation in

1 this project? That needs to be an essential
2 element to any usage of water or any item that's
3 limited. And I don't see that as a part of the
4 discussion in the decisionmaking of this project.
5 And you cannot tell me that the water levels are
6 not going to be impacted by this project. That's
7 not true.

8 I live in a household where I haul water.
9 This is the year 2008. You're coming from
10 communities that have water. I don't. I depend on
11 that water. I have yet to be -- I have yet to
12 benefit from the NAWS water project for which this
13 Tribe is waiting for appropriations.

14 My community has had to extend its water
15 intake a couple years ago on account of low and
16 dropping water levels, as well as Parshall, as well
17 as other communities. So you can't -- you know, I
18 challenge the statement that was made this evening.
19 When you live it, that cannot be -- I just can't
20 let that go. I'm living without water -- potable
21 water.

22 The water level for the Lake Sakakawea,
23 the Garrison Reservoir has been on decline -- has
24 been in decline, and I heard the statement that if
25 it remains at the level that it is, then we have

1 nothing to worry about. We have a tremendous
2 amount to worry about. That water is a resource
3 for many people. There has not been a
4 consideration of all of the proposed and existing
5 development in this region with ethanol plants that
6 are being planned and are in operation, of a
7 proposed refinery, of the development of oil
8 production, and that's growth, but that growth does
9 depend upon water, and that needs to be taken into
10 consideration. When we're talking about water,
11 growth does have to be taken into consideration.
12 Population also has to be taken into
13 consideration -- true population.

14 And then when I heard the earlier --
15 Alicia was speaking in the summary about Indian
16 trust assets and environmental justice as not being
17 impacted. I would say in what way haven't they
18 been impacted in the Indian trust assets? Water is
19 our trust asset, so it is being impacted. Our
20 water rights are being impacted. We have yet to
21 come to the position and to the point of water
22 quantification. Until we have reached that, our
23 water rights are being impacted.

24 And talking about environmental justice,
25 the people who depend upon the water from the

1 Garrison Reservoir, all those people, whether
2 they're Indian people or white people, or whatever
3 color they are, they are impacted, also. That's
4 the extent of my comments. Thank you.

5 MR. ANDERSON: Thank you. Anyone else
6 that would like to? If you would step forward and
7 state your name for the court reporter.

8 MS. THEODORA BIRD BEAR: My name is
9 Theodora Bird Bear and I'm from Mandaree and I'm
10 also enrolled here at the Fort Berthold Indian
11 Reservation. I've lived in Mandaree probably
12 almost 50 years.

13 And I read recently, within the last week
14 or so, an article in The Bismarck Tribune, they did
15 a series on energy, and what I read is -- and what
16 I understand is that the former Governor Schafer
17 had made it illegal for the federal water projects
18 to consider the impacts of environmental global
19 warming. So, consequently, I'm sure that that has
20 not been considered in this study, and so I say
21 that this study is really invalid because the
22 global warming has already been studied by
23 thousands of scientists throughout the world, it is
24 a valid study. And the basis of this project which
25 is discounting the depletion of the Mississippi --

1 Missouri River water, that's an invalid decision,
2 and I guess I question whoever made that decision.
3 Thank you.

4 MR. ANDERSON: Thank you. Anyone else?
5 Seeing no one else, we'll conclude the hearing
6 officially, and I would thank you all for being
7 here.

8 (Concluded at 7:57 p.m., the same day.)

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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
February, 2008.

Denise M. Andahl
Registered Professional Reporter