Platte River Endangered Species Recovery Program

Indian Trust Asset
Appendix

to the

Platte River Final Environmental Impact Statement

January 31, 2006

U.S. Department of the Interior
Bureau of Reclamation
Denver, Colorado

TABLE of CONTENTS

Introduction....1
The Recovery Program and FEIS....1
Indian trust Assets....1
Study Area....2
Indicators....3
Methods....4
Background and History....4
Introduction....4
Overview - Treaties, Indian Claims Commission and Federal Indian Policies....5
History that Led to the Need for, and Development of Treaties.... 6
Present Condition....7
Summary....7
Consultation Process....8
Treaty and Related Research by American Indian Tribe/Nation....8
Indian Claims Commission....11
Summary....11
Bibliography....13
Attachments....follow page 13

INTRODUCTION

The Recovery Program and the Final Environmental Impact Statement

The U.S. Department of the Interior (Interior) has prepared a final environmental impact statement (FEIS) to assess the environmental consequences of a proposed Recovery Implementation Program (Program) to benefit four threatened and endangered species and their habitat in and along the Platte River in Nebraska. This appendix contains detailed information that supports conclusions in the Indian Trust Asset (ITA) section of the FEIS.

In 1997, the States of Nebraska, Wyoming, and Colorado and Interior signed a *Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska* (Cooperative Agreement).[1] In this agreement, the signatories agreed to pursue a Basin-wide, cooperative effort to improve and maintain habitat for four threatened and endangered species using the Platte River in Nebraska.

The Cooperative Agreement established the general, long-term goal of improving and maintaining the target species-associated habitats. The primary goals established for the first, 13-year increment of a Program analyzed in the FEIS, and that are the focus of the action alternatives include:

- Protecting and restoring 10,000 acres of habitat in the Central Platte area.
- Improving achievement of U.S. Fish and Wildlife Service river flow targets in the Habitat Area of the Central Platte River by 130,000 to 150,000 acre-feet per year by changing the amounts and timing of storage and releases in upstream reservoirs on the North and South Platte Rivers.

Indian Trust Assets

Each Department of the Interior (Interior) bureau (including Reclamation), must identify any potential effects on ITAs or resources, and any effect must be explicitly addressed in planning documents, including EISs, and must be conducted in a government-to-government manner, as required by:

- Memo from Reclamation Commissioner, April 8, 1994, *Bureau of Reclamation Indian Trust Asset Procedures*.

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[1] Available from the Platte River EIS Office, Denver, Colorado, and can be seen at <www.platteriver.org>.

- Memo from Reclamation Commissioner, February 25, 1998, *Reclamation's Indian Policy*.
- Interior Departmental Manual 512 DM2, December 1, 1995, *Departmental Responsibilities for Indian Trust Resources*,
- Memo from Reclamation Commissioner, January 16, 2001, *Reclamation Compliance with Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments*,
- Executive Order 13175, November 6, 2000 *Consultation and Coordination with Indian Tribal Governments*,
- Secretarial Order 3206, June, 5, 1997, *American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act*, Washington, D.C., Secretary of the Interior and Secretary of Commerce.

Tribal/Tribal Nation ITAs are legal interests in property held in trust by the United States for Indian tribes or individuals. The Secretary of Interior acts as the trustee for the United States with respect to ITAs. All Interior agencies share the Secretary's duty to act responsibly to protect and maintain ITAs reserved by or granted to Indian tribes or individuals by treaties, statutes, and executive orders. These rights are sometimes further interpreted through court decisions and regulations. Examples of trust assets include lands, minerals, hunting and fishing rights, and water rights. Interior carries out its activities in a manner that protects trust assets and avoids adverse impacts, as directed in the regulations cited above.

STUDY AREA

The Program study area is the Platte River Basin (Basin), shown below in figure ITA-1, along with its sub-basins. American Indian Tribes and Nations with aboriginal claims in the Basin are shown in figures ITA-2. Tribes at the time treaties were written include; Sioux Nation, Cheyenne and Arapaho Tribes, Pawnee Nation, Omaha Tribe, and Otoe and Missouria Tribes. Since treaty years, several Tribes have divided into multiple Tribes/Tribal Nations on many reservations. The list of current Tribes/Tribal Nations and Reservations is in attachment ITA-3.

Platte River Basin

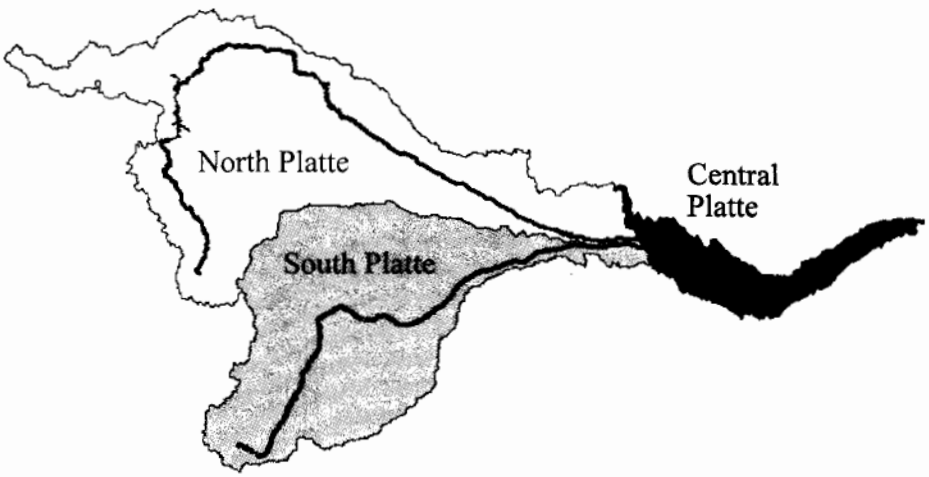

Figure ITA-1. Platte River Basin Program study area divided into the North Platte, South Platte, and Central Platte River sub-basins

INDICATORS

An impact is considered to exist for any action that would result in the following:

- An adverse result in terms of the value, use, or enjoyment of an ITA
- A failure by any Federal agency to protect ITAs from loss, damage, waste, depletion, or other negative effects

METHODS

The existence and location of ITAs were assessed according to applicable laws and regulations:

1. Consultation with Tribes that had aboriginal claims to the Platte River Basin, including a requested to provide information on any ITAs in the Program area,

2. Reclamation reviewed all applicable treaties, statutes, and executive orders, including findings of the Indian Claims Commission, and

3. Consultation was held with the Bureau of Indian Affairs Aberdeen Area Office the Reclamation Solicitors Office in the Great Plains Region

Several tribes resided in the Platte River area at various times. The Lakota or Sioux, Cheyenne, Arapaho, and Pawnee hunted buffalo in the west and central Platte River regions. The Otoe and Missouria, Omaha, and Poncas were historically in the central Platte River region, as well as in areas further east, north and south. For purposes of the ITA assessment, the existence and location of ITAs were assessed in consultation with the Bureau of Indian Affairs (BIA) and tribes that had aboriginal claims, brought before the Indian Claims Commission, to the Platte River Basin, which included: Cheyenne, Arapaho, Sioux Nation tribes, Pawnee, Omaha, and Otoe Missouria tribes. Judicially established Indian land areas in the Platte Basin are shown in a 1978 (figure ITA-2) that depicts the results of the cases before the U.S. Indian Claims Commission for Tribes that proved original tribal occupancy of various areas in the country.

BACKGROUND and HISTORY

Introduction

In the past, Federal Indian policy has shaped the relationship between American Indian Tribes and the Federal government into its form today, and the Federal trust responsibility has been a key element of the relationship from treaty times. In fact, the earliest of the policies is referred to as the "trust doctrine." The Federal trusteeship in Indian affairs, or trust doctrine arose from Cherokee Nation v. Georgia (1831), in which it was found that Indian Tribes are "distinct political" communities considered to be "domestic, dependent nations" whose "relation to the U.S. resembles that of a ward to his guardian." (AILTP, 1988). Central to the trust doctrine, or trust responsibility, is the protection of ITAs, which are legal interests in property held in trust by the United States for Indian Tribes or individuals. Some common examples include water rights, mineral rights, and hunting and fishing rights. The Secretary of the Interior acts as the trustee for the United States with respect to ITAs. All Department of the Interior agencies share the Secretary's duty to act responsibly to protect and maintain Indian trust assets reserved by or

Judicially Established Indian Land Areas

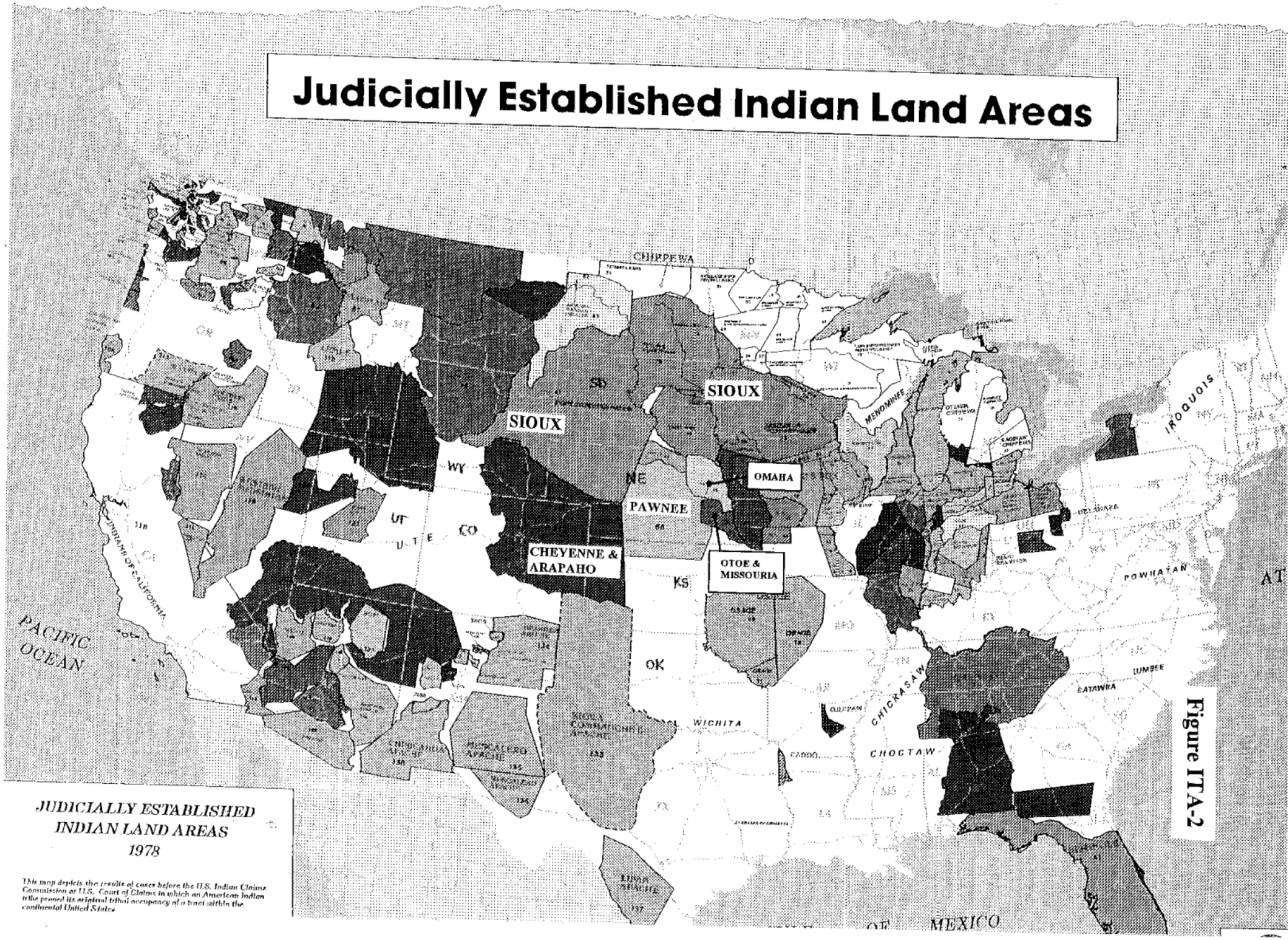

Figure ITA-2

granted to Indian tribes or individuals by treaties, statutes, and executive orders (see regulations listed in Introduction section and in the bibliography of this ITA Appendix.

Overview - Treaties, Indian Claims Commission and Federal Indian Policies

During the treaty-making era, the U.S. Government attempted to assign smaller sections of lands to each Tribe (and sometimes several tribes) that included or resembled some of their original territory; such parcels are referred to in the treaties as "reserves" or "reservations." Often reserved rights, such as hunting, were implied or explicitly included in the treaties, and the Government has a trust responsibility to tribes to protect rights, or ITAs, that have not been specifically extinguished. Since the process was not clear-cut and involved many disputes, often subsequent treaties were made which revised or negated original treaties, but which may have left some or all of the former rights (ie, hunting, fishing) in tact. For this reason, all signed treaties were researched for the Platte River Endangered Species and Recovery Program (Program)(see the "Treaty and Related Research by American Indian Nation/Tribe" section) (AILTP, 1988).

The Treaties Statute of 1871 (25 U.S.C.§ 71) ended treaty making with tribes, and were replaced by executive orders which served as the new form for modifying reservations. Unlike treaties, executive orders pertaining to reservations are explicit. For the Platte River Basin, all applicable, official executive orders were researched, and in many cases, they further reduced the size of the reservations. The General Allotment Act of 1887 (25 U.S.C. 331-4, 341, 342, 348, 349, 351, 381), also known as the Dawes Act, initiated the U.S. Government action of allotting parcels of reservation lands to tribal members and sold parcels to settlers (AILTP, 1988).

Many western tribes described injustices concerning their lands that could be traced back primarily to the treaty, executive order, and allotment processes. By 1875, claims filed by Indians reached nearly $10 million and by 1892, it had climbed to about $25 million. Many of the claims were disallowed based on a lack of sufficient evidence. In 1872, Congress passed legislation (17 U.S. Stat. 190) providing that no claims could be paid unless funds were specifically appropriated for that purpose. The Indian Claims Commission Act of 1946 (25 U.S.C. § 70a) was passed to enable Tribes to bring cases to court with the possibility of obtaining damages for the loss of Tribal lands, and Congress' intent was to finally settle all claims. The special court was authorized to hear, determine, and settle cases, which included only monetary payments when applicable (the Act did not allow for other forms of compensation). Interest on claims based on takings of aboriginal title were not allowed (AILTP, 1988).

The Federal Government deals with tribal governments today on a government-to-government basis that started with the passage of the Indian Reorganization Act (IRA) of 1934. Important outcomes of the IRA were that it halted the allotment process, protected tribal lands, resulted in the creation of formal tribal governments, and promoted self-governing powers. More recent legislation and executive orders have further specified that, concerning ITA identification and

many other matters, the Federal Government must deal with tribes on a government-to-government basis (Canby, 1988).

History that Led to the Need for, and Development of Treaties–Focus on the Fort Laramie Treaties

The focus of this section is on the Sioux (also referred to as Lakota) because these Tribes/Tribal Nations had aboriginal territories in the Platte Basin and were part of the Fort Laramie Treaties of 1851 and 1868. Based on those Treaties, the Sioux maintain that they have an unresolved claim that could affect ITAs. However, much of the following discussion also applies to the situation of other Plains Tribes/Tribal Nations, and further information about other Platte River Basin Tribes' treaties and executive orders are in the "Treaty and Related Research by American Indian Tribe/Nation"section.

During the 1850s through the 1870s, the increasing numbers of settlers placed pressure on Tribes, primarily as it became more difficult for Plains Indians to hunt buffalo, the source of food, clothing, and many other necessities. Once reservations were established, the army pursued bands that went off-reservation to hunt (Sturtevant, 2001).

Pre-Treaty History

Many Sioux villages were noted by travelers along the North Platte River around 1850. The Sioux began to realize that there was no end to the travelers and settlers, and as a result, their food supply, the buffalo, was disappearing. Partially as a result, in 1854, at a point about eight miles east of Fort Laramie at the American Fur Company, an army officer and soldiers were killed by Sioux warriors who had been awaiting distribution of goods, referred to as the Grattan Masacre. The following year, in retaliation, and along the North Platte just northeast of Lake McConaughy, Ash Hollow was the vicinity of another battle, the Battle of Ash Hollow (or the battle of Blue Water or the Harney Massacre). The U.S. army attacked a Sioux encampment in early morning hours on September 3, 1855, about six miles northwest of Ash Hollow and across the North Platte in the valley of Blue Creek. The Battle of Ash Hollow and the Grattan Masacre both were primarily responsible for ushering in the beginning of two decades of intense warfare on the plains (Mattes, 1969, p. 312).

Treaty-Making Era

Fort Laramie was an area with many Indian villages and encampments, and the conflicts of the time leading to the Fort Laramie Treaty have been described as follows:

> "The unrest among the tribes camped along the North Platte and elsewhere led to the Great Fort Laramie Treaty Council of 1851, unique in western annals because of its immense size and the number of different tribes from all over the Northern Plains–including hereditary enemies such as Cheyenne and Shoshoni, Sioux and Crow–who attended in an unaccustomed spirit of peace...In the treaty, tribal territories were roughly delineated and, in exchange for their good behavior along the emigrant road, the Indians were promised that their tribal rights would be respected. In addition, and more to the point, they would receive $50,000 in annuity for goods for fifty years. Before accepting the treaty, the U.S. Congress reduced this to ten years."(Mattes, 1969 p. 516-517).

In an 1868 treaty signed at Fort Laramie, the United States recognized the Black Hills of South Dakota as part of the Great Sioux Reservation, set aside for exclusive use by the Sioux people.[2] However, after the discovery of gold there in 1874, the United States confiscated the land in 1877. To this day, ownership of the Black Hills remains the subject of a legal dispute between the U.S. government and the Sioux (Sturtevant, 2001). For further information on Sioux treaties and land cessions, see the "Treaty and Related Research by American Indian Nation/Tribe" section.

PRESENT CONDITION

Summary

Consultations and a review of histories and treaties showed that about fifty years ago, area tribes established with the Indian Claims Commission that they originally occupied a portion of the Platte River Basin, and that the Sioux Nation had not entirely settled their claims. However, in order for potential ITA impacts to occur, ITAs must exist in the Program area. Presently there is no clear, legal determination that the Sioux Nation has water rights claims in the North Platte River. The Cheyenne and Arapaho wish to settle their land and water claims through creation of of a 500 acre trust land parcel in the Pueblo, Colorado area–outside the Program area. During consultations with other Tribes/Tribal Nations, there have been no further indications of ITA claims. For these reasons, no ITA impacts are foreseen at this time.

The Cheyenne and Arapaho Tribes assert land, water, and mineral claims to approximately 27 million acres of land in the northeastern corner of Colorado. The Cheyenne and Arapaho Tribes wish to settle their land and water claims through creation of a 500 acre trust land parcel in the Pueblo, Colorado area, referred to as "The Homecoming Project," (http://www.homecomingproject.org).

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[2]Although the Northern Cheyenne and Arapaho had agreed in the 1868 treaty to settle on the Great Sioux Reservation or in the Indian Territory, they preferred to remain in their own northern country.

Consultation Process

A September 2000 letter was sent from the Platte River EIS Office to the Regional Director of the Bureau of Indian Affairs (BIA) Great Plains Regional Office in Aberdeen, South Dakota, explaining the Program and requesting any information they may have about ITAs in the Platte River Basin (attachment ITA-2). In the September 24, 2001 response, it was stated that there are no trust properties within the project area boundaries, that the BIA does not do "treaty analysis," and that such analysis is done by agency or tribal solicitors. The letter also stated that there are judicially established Indian land areas within the basin that were determined through a judicial review with the U.S. Indian Claims Commission. A map was also enclosed (attachment ITA-3).

On November 13, 2000, letters were sent to American Indian Tribal and Nation Chairmen and Presidents informing them of the intent of the Program, that the DEIS would be prepared, and asking if there are any ITAs in the Basin (attachment ITA-4). A response was received from the Rosebud Sioux Tribe on December 4, 2000 stating that the southern border of the Sioux Nation Treaty area includes the North Platte River, and as a result, the Sioux Nation may have water rights issues to be addressed. The opinion expressed is also based on the fact that the monetary compensation from the Claims Court cases was not accepted by the Sioux Nation with the primary goal of regaining the 1851 and 1868 treaty lands (see figure ITA-2). However, at present there have been no further legal actions taken by the Sioux Nation in attempt to acquire water rights.

On October 10, 2003, letters (attachment ITA-6) were mailed to the two Tribes, the Pawnee Nation and Rosebud Sioux Tribe, that had responded and commented earlier about the Program. The letters transmitted a working draft version of the DEIS, highlighted cultural resources findings and ITA results, and requested comments. No comments were received.

A January 22, 2004 letter (attachment ITA-7) was sent to the 21 Tribes transmitting the DEIS with a summary of ITA findings and a request for any comments. On March 13, 2004, a letter was sent to the Tribes notifying them of the Federal Register notice and that the comment period on the DEIS was extended. The Southern Ute Indian Tribe responded in several letters with the comments that it did not believe there are any known impacts. The Crow Tribe responded in an August 5, 2004 letter in which it requested consultation on all matters in its 1851 Treaty area.

Treaty and Related Research by American Indian Tribe/Nation

Treaties for the Sioux Nation Tribes, Cheyenne and Arapaho Tribes, Pawnee Tribe, Omaha Tribe, and Ottoe and Missouria Tribes were analyzed (Kappler, 1903). In addition, the Reclamation Great Plains Regional Solicitor was contacted December 4, 2001 for further review.

The Great Sioux Nation Tribes

The Sioux Nation established with the Indian Claims Commission that their bands originally occupied the north Platte River area, among others, as shown in figure ITA-2. The 1851 Fort Laramie Treaty stated that the tribe relinquished what was then half of the state of Minnesota and their lands in Iowa. It also stated that, "...in making this recognition and acknowledgment, the aforesaid Indian nations do not hereby abandon or prejudice any rights or claims they may have to other lands; and further, that they do not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described."

The 1868 Treaty established the Great Sioux Reserve, or the State of South Dakota, and ceded large sections of land reserved in the 1851 Treaty. Language of the 1868 Treaty included a provision that the Sioux bands relinquished all claims or rights to any portion of lands other than those in South Dakota, "...yet reserve the right to hunt on any lands north of North Platte...so long as the buffalo may range there on in such numbers as to justify the chase." Article 16 stipulated that the "...country north of the North Platte River...shall be held and considered to be unceded Indian territory." Many subsequent executive orders further reduced and subdivided the Great Sioux Reserve into smaller reservations, and in some cases included small areas outside the South Dakota area. The Sioux claims for insufficient compensation for aboriginal and ceded lands in the early treaties were brought to the Indian Claims Commission and adjudicated between 1920 and the present. By 1978, the Sioux Nation adjudicated claims included a total of about 175 million acres, and final monetary awards are still pending.

Cheyenne and Arapaho

The Cheyenne and Arapaho tribes established with the Indian Claims Commission that they occupied the western Platte River area, as shown in figure ITA-2 and ITA 2A. The 1851 Fort Laramie Treaty recognized and acknowledged the territory of the Cheyenne and Arapaho along the Platte River (this area is depicted by the 1978 map, figure ITA-2). The Little Arkansas Treaty of 1865 specifically relinquished this Platte River territory for reservations to be established in Kansas and Indian Territory in Oklahoma. Other treaties withdrew lands around the Arkansas and Cimarron rivers for the tribes' use, and through the Medicine Lodge Treaty of 1867 the tribes ceded their former lands and accepted lands between the Arkansas and Cimarron rivers. In an 1868 Fort Laramie treaty, the tribes expressly released any interest in lands (including any lands north of the Platte River) other than the Medicine Lodge Reservation. Finally, in 1869, the tribes exchanged the Medicine Lodge Treaty lands for a reservation along the North Canadian and upper Washita rivers. Several treaties, particularly the 1851 Fort Laramie Treaty, mentioned hunting rights in the Platte River area, however the 1868 treaty reserved "the right to roam and hunt while game shall be found in sufficient quantities as to justify the chase."

In 1878, the Northern Arapaho joined the Eastern Shoshone on the Wind River Reservation. The Northern Cheyenne Reservation was created in a November 26, 1884 Executive Order. By 1964, the Cheyenne and Arapaho Tribes' land claims were adjudicated concerning over 50 million acres as decided by the Indian Claims Commission and U.S. Claims Court, settlement appropriations have been distributed.

Pawnee Tribe

In 1957 the Pawnee Tribe established with the Indian Claims Commission that it originally occupied the central Platte River area, among others, as shown in figure ITA-2 and ITA 2A. The 1833 Treaty with the Pawnee included language stating that they relinquished all their right, interest, and title to all land lying south of the Platte River, and that it would remain a common hunting ground "...during the pleasure of the President..." The 1857 Treaty ceded a large section of land and created a reservation on the Platte River that was 30 miles long and 15 miles wide (or 288,000 acres) in eastern Nebraska. Because of raiding, settlement, and other problems, the Pawnee migrated to Indian Territory in Oklahoma by 1857, and they selected a reservation of 283,026 acres around Pawnee City. By the November 23, 1892 Jerome Agreement (ratified by Congress on March 3, 1893), the Pawnee Reservation in Oklahoma was abolished, and 111,931 acres were allotted to the Pawnee, with most of it being "surplus" land. Either appropriate payments to the Pawnee had not been made for the losses, sales, and cessions of lands, or no payments had been made, and claims were brought by the Pawnee to the Indian Claims Commission and adjudicated between 1949 and 1957. By 1964, the Pawnee Tribe received lands claims settlements concerning a total of over 23 million acres of ceded lands.

Omaha Tribe

The Omaha Tribe established with the Indian Claims Commission that they originally occupied the eastern portion of the Platte River area, among others, as shown in figure ITA-2. In 1820, 1830, 1836, and 1854 treaties, the Tribe ceded most of its aboriginal lands. The reservation lands were unsatisfactory to the Tribe, and it exercised its option to exchange the lands for a tract of 300,000 acres to be designated. The Blackbird Hills area was selected, located on the west bank of the Missouri, all of which was then part of Nebraska Territory. In 1865 and again in 1873, the Omaha Reservation was further reduced in size. On July 10, 1951, the Omahas, Iowas, and Sac and Foxes filed a case with the Indian Claims Commission claiming additional compensation for lands in Royce Cession 151.

Otoe Missouria Tribe

The Otoe and Missouria Tribes established with the Indian Claims Commission that they originally occupied the eastern portion of the Platte River area, among others, as shown in figure

ITA-2. The 1833, 1836, and 1854 treaties with the Otoe and Missouri included language stating that they ceded and relinquished all right and title to the United States of large sections of aboriginal lands. The Platte River area was ceded in the 1854 Treaty. As a result of the treaties, (and aside from the Nemaha "half breed" reservation), the Otoe and Missouria had to move to the Blue River reservation near the Nebraska - Kansas border. In 1881, the Tribes sold the reservation and moved to Indian Territory (Oklahoma). Between about 1950 and 1964, the Otoe and Missouria brought claims before the Indian Claims Commission concerning ceded lands, and Congress provided a settlement in 1964.

Indian Claims Commission

In each of the Indian Claims Commission court cases, it was found that the original compensation payments were deficient at the time the tribes had relinquished their larger segments of aboriginal lands for smaller reservation areas. For this reason, the Indian Claims Commission provided for monetary compensation to settle these off-reservation aboriginal claims.

Monetary compensation was accepted by each tribe, with the exception of the Sioux Nation tribes which has refused the funds with the primary goal of regaining the 1851 and 1868 treaty lands, particularly the Black Hills in South Dakota which they deem sacred. Based on this history, the Sioux Nation believes it may have water rights issues to be addressed in the Platte River Basin. The southern border of the 1868 Sioux Nation Treaty area is the North Platte River. However, at present there have been no further legal actions taken by the Sioux Nation in attempt to acquire water rights in the North Platte River.

SUMMARY

Through consultation and research, it was discovered that about 50 years ago, each of the Tribes established with the Indian Claims Commission that they originally occupied a portion of the Platte River Basin. In each of these court cases, it was found that the original compensation payments were deficient at the time the Tribes had relinquished their larger segments of aboriginal lands for smaller reservation lands. For this reason, the Indian Claims Commission provided for monetary compensation to settle these off-reservation aboriginal claims.

The monetary compensation was accepted by each Tribe, with the exception of the Sioux Nation, which has refused the funds with the primary goal of regaining the 1851 and 1868 treaty lands, particularly the Black Hills in South Dakota. Based on this history, the Sioux Nation believes it may have water rights issues to be addressed in the Platte River Basin. The southern border of the Sioux Nation Treaty area is the North Platte River. However, at present there have been no further legal actions taken by the Sioux Nation in attempts to acquire water rights; therefore,

ITAs do not exist in the Program area. Presently there is no clear, legal determination that the Sioux Nation has water rights claims in the North Platte River. The Cheyenne and Arapaho wish to settle their land and water claims through creation of a 500 acre trust land parcel in the Pueblo, Colorado area–outside the Program area. During consultations with other Tribes/Tribal Nations, there have been no further indications of ITA claims. For these reasons, no ITA impacts are foreseen at this time.

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Bureau of Reclamation. January 16, 2001, memorandum from the Commissioner, *Reclamation Compliance with Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments*

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information furnished by the Indian Claims Commission. Map was compiled, edited and published by the USGS.

ATTACHMENTS

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Attachment ITA-1

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ENV-6-00

Bureau of Indian Affairs
Great Plains Region
Attn: Cora Jones, Regional Director
115 Fourth Ave., SE
Aberdeen, SD 57401-4384

Dear Ms. Cora Jones,

The Bureau of Reclamation is leading a Department of the Interior effort to prepare a programmatic environmental impact statement (EIS) that addresses endangered species issues in the Platte River Basin. The initiative has been designated as the Platte River Endangered Species Recovery Implementation Program (Program). Given the programmatic nature of the EIS, only broad-scope proposals or programs will be analyzed and it will provide a generic analysis of impacts. Any site-specific actions that would result from adoption of the broad program will be analyzed and reported in separate, subsequent National Environmental Policy Act (NEPA) documents prior to implementation. The Program also includes the states of Colorado, Nebraska, and Wyoming.

The Program draft EIS process requires that we ascertain whether any Indian trust assets (ITAs) exist in the study area (Platte River Basin - see enclosed map) before determining whether Indian trust assets (ITAs) may be affected. We request assistance from the BIA in determining whether any ITAs may be present in the Program Study area. Since the Program study area is generally in the BIA Great Plains region, we request that the BIA office in Aberdeen, South Dakota assume the lead to determine whether any ITAs exist for the entire Platte River Basin.

We envision contacting tribes in late October regarding our ITA assessments. To facilitate the speedy resolution of any ITA issues, we request BIA provide their response by October 20, 2000. Please contact Rebecca Redhorse at (303) 445-2095, or e-mail: rredhorse@pr.usbr.gov.

Sincerely,

Curtis A. Brown, Study Manager
Platte River EIS Office

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enclosures: Preliminary Fact Sheet(s)
Study Area Map

cc: Bureau of Indian Affairs
Eastern Oklahoma Region
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w/enclosures

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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Rocky Mountain Regional Office
316 North 26th St.
Billings, Montana 59101

IN REPLY REFER TO:
Environmental Services-160

29 SEP 2000

MEMORANDUM

TO: Platte River EIS Office

FROM: Deputy Director, Rocky Mountain Region

SUBJECT: Platte River Basin Environmental Impact Statement (EIS)

We have reviewed the subject notice of intent. The Platte River Endangered Species Recovery Implementation Program will evaluate an area that is outside the jurisdiction of this office. The only reservation under our jurisdiction that is somewhat proximal to the study area is the Wind River Reservation in Wyoming. However, a hydrologic divide separates the reservation from the Platte River headwaters.

For this reason, Indian trust assets are not impacted.

Questions may be directed to Rick Stefanic at 406/247-7911.

William L Pengaini

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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Plains Regional Office
115 Fourth Avenue S.E.
Aberdeen, South Dakota 57401

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IN REPLY REFER TO:
Natural Resources
MC-301

Attachment ITA-2

SEP 24 2001

Mr. Curtis A. Brown, Study Manager
Bureau of Reclamation
Platte River EIS Office
44 Union Boulevard, Suite 100
Lakewood, Colorado 80228-1808

Attention: Rebecca Redhorse

Dear Mr. Brown:

We received your request for information on Indian trust assets within the Platte River Basin. This is for the preparation of a programmatic environmental impact statement that addresses endangered species issues in the basin.

We have reviewed our records for trust properties. There are no trust properties within the project area boundaries.

Diane Mann-Klager, Regional Biologist, discussed this topic during a telephone conversation with Ms. Redhorse. Ms.Redhorse was informed that we do not conduct treaty analysis. These are done by departmental solicitors for government agencies or by tribal solicitors for a tribe.

There are judicially established Indian land areas within the basin. These are original tribal occupancy tracts that were determined through a judicial review with the U.S. Indian Claims Commission or the U.S. Court of Claims. A map depicting these areas is enclosed.

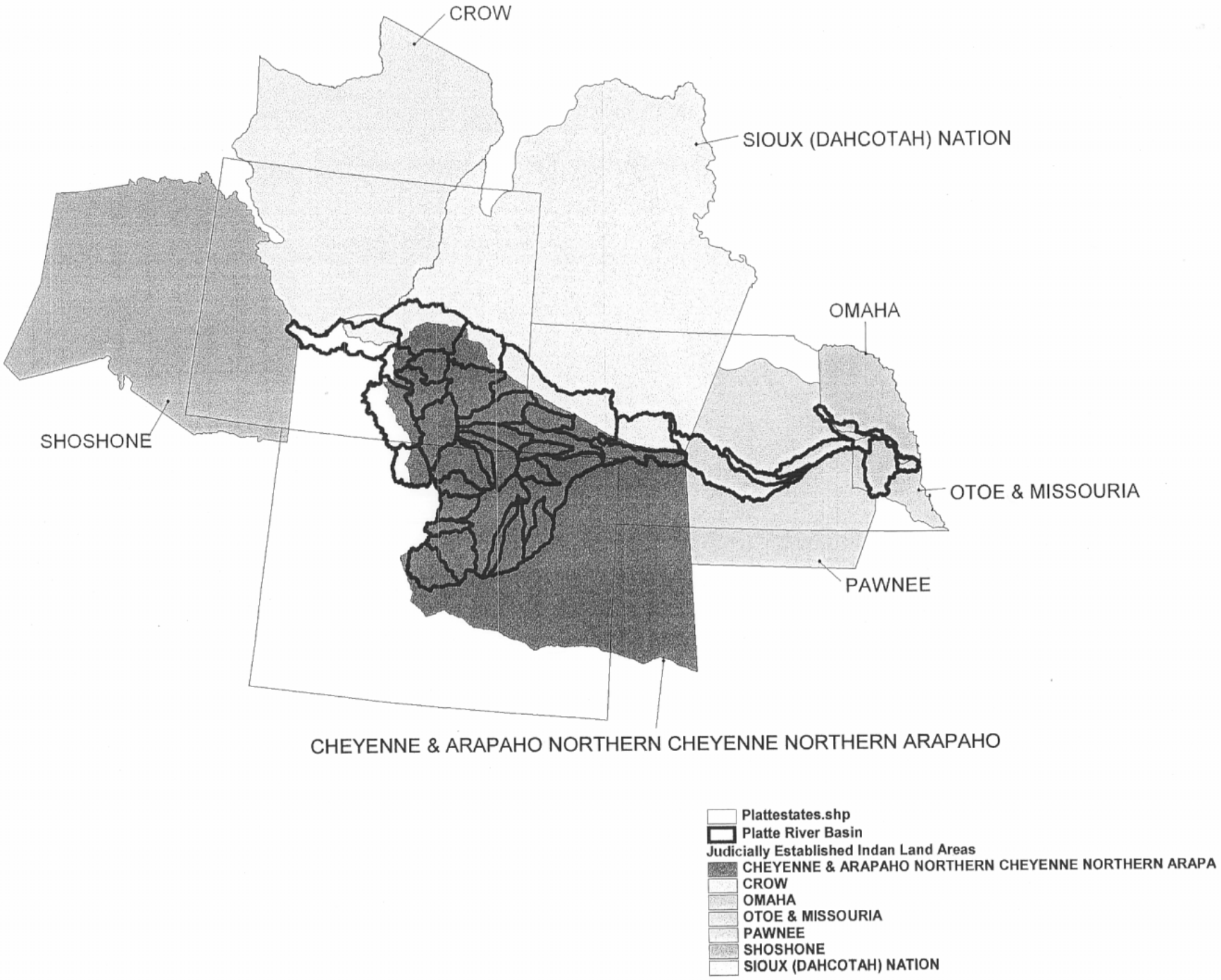
Please contact Diane Mann-Klager, Wildlife Biologist, at (605) 226-7621 if you have any questions.

Sincerely,

Alice A. Harwood
for
Cora L. Jones
Regional Director

Enclosure

cc: Regional Director, Eastern Oklahoma Region
Regional Director, Southern Plains Region
Regional Director, Rocky Mountain Region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SHOSHONE
SIOUX (DAHCOTAH) NATION

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Bureau of Reclamation

United States Department of the Interior

BUREAU OF RECLAMATION & FISH AND WILDLIFE SERVICE

Platte River EIS Office
PO Box 25007
Denver, Colorado 80225-0007
303-445-2096

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Attachment ITA-3

IN REPLY REFER TO:

PL-100
ENV-6-00

NOV 13 2000

(See Addressee List)

Subject: The Platte River Endangered Species Recovery Implementation Program

Dear Mr. Addressee :

The Platte River Endangered Species Recovery Implementation Program (Program) is preparing a programmatic draft environmental impact statement (EIS) to evaluate impacts of alternatives to improve and conserve habitats along the Platte River for several threatened and endangered species: Whooping crane, piping plover, least tern, and pallid sturgeon. A detailed description of the Platte River Program can be found at website www.platteriver.org, and a map of the Program area, the Platte River Basin, is included on the back of the "Platte River Cooperative Agreement" enclosure.

At this time, alternative actions include clearing and leveling some islands in the river channel (physical modifications), and reservoir release changes (operational modifications). The Program is a partnership between the Department of the Interior and the states of Nebraska, Colorado, and Wyoming. A draft programmatic EIS is planned to be completed by late 2001. More information about the Program and proposed elements which are being used to form alternatives are enclosed.

The Bureau of Reclamation, which is the lead agency for the Platte River Program, is cognizant of its trust responsibilities to tribes (Reclamation ITA Policy enclosed). To assure protection of Indian Trust Assets (ITAs), the Bureau of Reclamation has adopted procedures (enclosed) to identify and analyze any impacts on ITAs in the preparation of environmental impact documents. Reclamation guidance specifies that ITAs will be identified and impacts determined, in part, by consultations with tribes. The Program area appears to be beyond contemporary tribal or allotted lands and reservations, and is also beyond the jurisdiction of the Bureau of Indian Affairs. Can we, therefore, state in the draft programmatic EIS that no ITAs exist in the Program area for your Tribe?

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Please contact Rebecca Redhorse to further discuss the Platte River Program ITA activities, or address any other Program question. Also, please inform us whether the Tribe would want additional Program information. Ms. Redhorse can be reached at (303) 445-2095, or via email at rredhorse@prs.usbr.gov.

Sincerely,

Curtis A. Brown

Curtis A. Brown, Study Manager
Platte River EIS Office

Enclosures

cc: Bureau of Indian Affairs
Eastern Oklahoma Region
Robert K. Impson, Acting Regional Director
101 North 5th. Street
Muskogee, OK 74401-6206

Bureau of Indian Affairs
Southern Plains Region
Dan Deerinwater, Regional Director
W.C.D. Office Complex
P.O. Box 368
Anadarko, OK 73005

Bureau of Indian Affairs
Rocky Mountain Region
Keith Beartusk, Regional Director
316 N. 26th Street
Billings, MT 59101

Don Ament
State of Colorado
700 Kipling St., #4000
Lakewood CO 80215-5894

Lawrence Besson
Wyoming Water Development Commission
Herschler Building
122 West 25th St., 4W
Cheyenne WY 82002

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Dayle Williamson
State of Nebraska
301 Centennial Mall South
Lincoln NE 68509

U.S. Fish and Wildlife Service
David Redhorse, Regional Native American Liaison
PO Box 25486-DFC
Denver CO 80225

Bureau of Indian Affairs
Great Plains Region,
Cora Jones, Regional Director
115 Fourth Ave., SE
Aberdeen, SD 57401-4384

Ron Eggers
Great Plains Regional Office
316 North 26h. Street – GP-1130
Billings, MT 59101

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LIST OF ADDRESSEES

Otoe-Missouria Tribe of Oklahoma
Acting Chairman Dewey Daily
8151 Highway 177
Red Rock, OK 74651

Omaha Tribe of Nebraska
Chairman Elmer Blackbird
P.O. Box 368
Macy, NE 68039

Northern Cheyenne Tribe
President Joseph Walksalong, Sr.
P.O. Box 128
Lame Deer, MT 59043

Arapaho Tribe
Chairman Anthony Addison, Sr.
P.O. Box 396
Fort Washakie, WY 82514

Cheyenne - Arapaho Tribes of Oklahoma
Chairman James Pedro
P.O. Box 38
Concho, OK 73022

Pawnee Nation of Oklahoma
President Robert L. Chapman
P.O. Box 470
Pawnee, OK 74058

Spirit Lake Sioux Tribe
Chairperson Phillip Longie
P.O. Box 359
Fort Totten, ND 58335

Standing Rock Sioux Tribe
Chairman Charles W. Murphy
P.O. Box D
Fort Yates, ND 58538

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Cheyenne River Sioux Tribe
Chairman Gregg J. Bourland
P.O. Box 590
Eagle Butte, SD 57625

Crow Creek Sioux Tribe
Chairperson Roxanne Sazue
P.O. Box 50
Fort Thompson, SD 57339

Flandreau Santee Sioux Executive Committee
President Thomas Ranfranz
P.O. Box 283
Flandreau, SD 57028

Sisseton Wahpeton Sioux Tribe
Chairman Andrew J. Grey, Sr.
P.O. Box 509
Agency Village, SD 57262

Lower Brule Sioux Tribe
Chairman Michael Jandreau
P.O. Box 187
Lower Brule, SD 57548

Oglala Sioux Tribe
Acting Chairman Wilbur Between Lodge
P.O. Box H #468
Pine Ridge, SD 57770

Rosebud Sioux Tribe
President William Kindle
Box 430
Rosebud, SD 57570

Yankton Sioux Tribe
Chairperson Madonna Archambeau
P.O. Box 248
Marty, SD 57361

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Santee Sioux Tribe
Chairman Arthur Denny
Route #2
Niobrara, NE 68760

Minnesota Mdewakanton Sioux
Chairman Roger Prescott
Community Center
39527 Res. Hwy 1
P.O. Box 308
Morton, MN 56270-9801

Shakopee Mdewakanton Dakota Community
Chairman Stanley Crooks
2330 Sioux Trail N.W.
Prior Lake, MN 55372

Prairie Island Dakota Community of Minnesota
Attn: Chairman
1158 Island Blvd.
Welch, MN 55089

Upper Sioux Community of Minnesota
Attn: Chairman
P.O. Box 147
Granite Falls, MN 56241

Pawnee Nation of Oklahoma

P.O. Box 470
Pawnee, Oklahoma 74058
PHONE: 918-762-2541
FAX: 918-762-4043

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SEP 11 2000

DATE	INITIALS	CODE

August 30, 2000

Mr. Curtis Brown
Study Manager
Platte River EIS Office

Dear Sir;

The Pawnee Nation Has no objections to the project as was explained to me over the phone. The majority of our sacred sites lie to the east of Grand Island, and mainly along the Loup and its tributaries, however there may be many undiscovered burial sites other unknown sacred sites anywhere along the Platte or other water ways in Nebraska.

If I can be of further assistance, please contact me at the above address or telephone number.

Sincerely

Francis Morris

Francis Morris, Coordinator
Repatriation Office/THPO

Repat file

Rosebud Sioux Tribe
SICANGU OYATE
ROSEBUD, SOUTH DAKOTA 57570
P.O. BOX 430
Phone 605/747-2381 - Fax 605/747-2243

WILLIAM KINDLE
President
ALEX J. LITTLE SOLDIER
Vice-President
CHARLES L. WHITE PIPE, JR.
Treasurer
GERRI NIGHT PIPE
Secretary
PAT BAD HAND, SR.
Sergeant-at-arms

04 DECEMBER 2000

Bureau of Reclamation & Fish & Wildlife Service
Platte River EIS Office
P.O. Box 25007
Denver, Colorado 80225 - 0007

RE: Platte River Endangered Species Recovery Implementation Program

Dear Curtis,

In reponse to your letter to the **Tribal President** dated **November 13, 2000,** I would like to remind you that the **Treaties** of **1851, Ft. Laramie** and the **1868 Ft. Laramie** are still valid today as they were back then.

The **Platte River** is the **southern boundary line** for the **Sioux Nation,** the **Sioux Nation** signed the **treaties,** so I don't think this includes **Rosebud** only, in fact this is the first time I have read this recovery program. There are other issues besides the **Endangered Species, Tribes** have **cultural resource** and **water rights** issues that needs to be addressed.

If the **cultural survey** is done under **NHPA, Section 106** then I need to be provided with a copy so I can respond. Again, the issue on **water rights** is ignored based on the **Winter's Doctrine.**

So, I would like to see these reports before I can recommend to the **Tribal President's** and the **Tribal Council's** blessing for their approval.

I hope you can in the future to include the **Tribes** in the process after all we are the first inhibitants of this **Turtle Island** you call **United States** of **America.** In closing, let us not forget **Article I, Clause 8, Section 3** of the **United States Constitution,** which recognizes the **sovereignty** of **Indian Tribes** and the **Constitution** expressly authorizes **Congress** to conduct relations with **Indian Tribal Governments.**

Sincerely,

Fremont Fallis

Fremont Fallis, Coordinator
Sicangu Lakota Treaty Council
Rosebud Sioux Tribe
P.O. Box 430
Rosebud, South Dakota 57570
Phone: (605) 747 - 2381 ext. 221, 239

Community/News
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Donna Mae's Lingerie
Fitzgerald Chips
Freeburg Hay

Midwest News

Attachment ITA-4

Web posted **Monday, April 23, 2001**

Tribal Representatives Study Water Rights, Land Issues

By CHET BROKAW
Associated Press Writer

PIERRE -- Representatives of the Oglala and Rosebud Sioux tribes are recommending that their tribes not agree to any settlement of their water rights until their land claims are settled.

Officials of the two tribes met recently to discuss Lakota water rights. They plan to present resolutions to both tribes that would ask the federal government to negotiate a settlement with all Sioux tribes on all outstanding claims on land, natural resources, sovereignty and water rights.

Frank Means, a member of the Oglala Sioux Tribal Council, said the group discussing the issue must develop a strong position for presentation at a water rights meeting to be held May 1-2 in Rapid City. The Bureau of Indian Affairs is sponsoring the meeting.

In a written statement, Fremont Fallis of the Rosebud Tribe said federal officials are wrong to try to quantify Sioux water rights before land claims are settled.

The Sioux continue to pursue claims involving 48 million acres in North Dakota, South Dakota, Nebraska, Montana and Wyoming. The land includes the Black Hills and the Missouri River shoreline that is being transferred from the federal government to the state.

The Black Hills and the rest of western South Dakota were reserved for the Lakota in the Fort Laramie Treaty of 1868. After gold was discovered in the Black Hills, however, the land was taken from the Lakota in 1877, and the Lakota were forced onto smaller reservations.

The U.S. Supreme Court in 1980 upheld an award that with interest has grown to about $600 million, but the high court did not call for returning the Black Hills land.

All the Lakota tribes have refused the money, saying they want the land

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Attachment ITA-5

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Cheyenne River Sioux Tribe
Chairman Gregg Bourland
P.O. Box 590
Eagle Butte, SD 57625

Subject: The Platte River Endangered Species Recovery Implementation Program (Program) Indian Trust Assessment (ITA) Letter Transmittal

Dear Chairman Bourland:

During your discussions of the Program and ITAs with David Redhorse, U.S. Fish and Wildlife Service, at an April 10 - 12, 2001 Bureau of Indian Affairs conference, you requested that we resend a copy of the letter we sent to you previously. The copy is enclosed. If you have any further questions, please contact Rebecca Redhorse at (303) 445-2095.

Sincerely,

CA Brown

Curtis A. Brown, Study Manager
Platte River EIS Office

cc: Bureau of Reclamation
Great Plains Regional Office
Ron Eggers, Native American Affairs Coordinator
316 North 26th Street - GP-1130
Billings, MT 59101

U.S. Fish and Wildlife Service
David Redhorse, Regional Native American Liaison
P.O. Box 25486-DFC
Denver, CO 80225

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Crow Creek Sioux Tribe
Chairwoman Roxanne Sazue
P.O. Box 50
Fort Thompson, SD 57339

Subject: The Platte River Endangered Species Recovery Implementation Program (Program) Indian Trust Assessment (ITA) Letter Transmittal

Dear Chairwoman Sazue:

During your discussions of the Program and ITAs with David Redhorse, U.S. Fish and Wildlife Service, at an April 10 - 12, 2001 Bureau of Indian Affairs conference, you requested that we resend a copy of the letter we sent to you previously. The copy is enclosed. If you have any further questions, please contact Rebecca Redhorse at (303) 445-2095.

Sincerely,

Curtis A. Brown, Study Manager
Platte River EIS Office

cc: Bureau of Reclamation
Great Plains Regional Office
Ron Eggers, Native American Affairs Coordinator
316 North 26th Street - GP-1130
Billings, MT 59101

U.S. Fish and Wildlife Service
David Redhorse, Regional Native American Liaison
P.O. Box 25486-DFC
Denver, CO 80225

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ENV-6.00

Oglala Sioux Tribe
President John Yellow Bird Steele
P.O. Box H #468
Pine Ridge, SD 57770

Subject: The Platte River Endangered Species Recovery Implementation Program Indian Trust Assessment (ITA) Letter Transmittal

Dear President Yellow Bird Steele:

During your discussions of the Platte River Endangered Species Recovery Implementation Program (Program) and ITAs with David Redhorse, U.S. Fish and Wildlife Service, at an April 10 - 12, 2001 Bureau of Indian Affairs conference, you requested that we send a copy of the letter we sent to the previous acting Chairman. The copy is enclosed, and we are including a copy to Mr. Richard Yellow Bird as you requested. If you have any further questions, please contact Rebecca Redhorse at (303) 445-2095.

Sincerely,

Curtis A. Brown, Study Manager
Platte River EIS Office

cc: Oglala Sioux Tribe
Richard Yellow Bird, Tribal Administrator
P.O. Box H #468
Pine Ridge, SD 57770

Bureau of Reclamation
Great Plains Regional Office
Ron Eggers, Native American Affairs Coordinator
316 North 26th Street - GP-1130
Billings, MT 59101

U.S. Fish and Wildlife Service
David Redhorse, Regional Native American Liaison
P.O. Box 25486-DFC
Denver, CO 80225

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Lower Brule Sioux Tribe
Chairman Michael Jandreau
P.O. Box 187
Lower Brule, SD 57548

Subject: The Platte River Endangered Species Recovery Implementation Program (Program) Indian Trust Assessment (ITA) Letter Transmittal

Dear Chairman Jandreau:

During your discussions of the Program and ITAs with David Redhorse, U.S. Fish and Wildlife Service, at an April 10 - 12, 2001 Bureau of Indian Affairs conference, you requested that we resend a copy of the letter we sent to you previously. The copy is enclosed, and we are including a copy to Mr. Scott Jones as you requested. If you have any further questions, please contact Rebecca Redhorse at (303) 445-2095.

Sincerely,

CA Brown

Curtis A. Brown, Study Manager
Platte River EIS Office

cc: Lower Brule Sioux Tribe
Mr. Scott Jones, Cultural Resources Coordinator
P.O. Box 187
Lower Brule, SD 57548

Bureau of Reclamation
Great Plains Regional Office
Ron Eggers, Native American Affairs Coordinator
316 North 26th Street - GP-1130
Billings, MT 59101

U.S. Fish and Wildlife Service
David Redhorse, Regional Native American Liaison
P.O. Box 25486-DFC
Denver, CO 80225

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Attachment ITA-6

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United States Department of the Interior

BUREAU OF RECLAMATION & FISH AND WILDLIFE SERVICE

Platte River EIS Office
PO Box 25007
Denver, Colorado 80225-0007
303-445-2096

IN REPLY REFER TO:

PL-100
ENV-6.00

OCT 10 2003

Rosebud Sioux Tribe
President William Kindle
11 Legion Avenue
Rosebud, SD 57570

Dear President Kindle,

The states of Nebraska, Wyoming, and Colorado, and the U.S. Department of the Interior have worked in partnership to develop a Platte River Endangered Species Recovery Program (Program), and will soon release a Draft Environmental Impact Statement (DEIS) to the public. The main goals of the Program, analyzed in the DEIS, are to:

- Improve and conserve habitat for four threatened and endangered species that use the Platte River in Nebraska: the whooping crane, piping plover, least tern, and pallid sturgeon.

- Enable existing and new water uses in the Platte River Basin to proceed without additional actions required beyond the Program for the four species under the Endangered Species Act.

The actions described in the DEIS focus on improving habitat in the Lexington to Chapman, Nebraska reach of the Central Platte River, referred to as the Habitat Area, by changing upstream reservoir operations and acquiring land. Habitat would be improved primarily by providing additional or modified river flows to and through the Habitat Area, and by managing, leasing, or acquiring up to 10,000 acres of appropriate lands (on a willing seller/lessor basis) in the Habitat Area.

We have contacted Tribes about the Program and DEIS since each Department of the Interior bureau must identify any potential effects on Indian trust assets (ITA), explicitly address them in planning documents, and conduct consultation in a government-to-government manner, as required by the National Environmental Policy Act (NEPA), Departmental Manual (Part 512 DM 2), 64 Stat. 1262 and other guidance. You may recall that we informed you in a letter, dated November 13, 2000, that a draft programmatic Environmental Impact Statement (DEIS) was being prepared, and asked if there were any ITAs in the area.

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As a result of our November 13, 2000 consultation letters to the Otoe-Missouria Tribe, Omaha Tribe, Northern Cheyenne Tribe, Arapaho Tribe, Cheyenne-Arapaho Tribe of Oklahoma, Pawnee Nation, and Sioux Nation Tribes, we received one response which was from the Rosebud Sioux Tribe. In the letter, dated December 4, 2000 (copy enclosed), Mr. Fremont Fallis, Sicangu Lakota Treaty Council Coordinator responded by stating that the southern border of the Sioux Nation Treaty area includes the North Platte River, and that as a result, the Sioux Nation may have water rights issues to be addressed.

Since we are also required to include the Bureau of Indian Affairs (BIA) in the ITA identification and consultation process, we had sent a September 2000 letter to the Regional Director, BIA Great Plains Regional Office in Aberdeen, South Dakota, explaining the Program and requesting any information they may have about ITAs in the Platte River Basin (copy enclosed). In September 24, 2001, the BIA responded that there are no trust properties within the project area boundaries, that the BIA does not do "treaty analysis," and that such analysis is done by agency or tribal solicitors. The letter also stated that there are judicially established Indian land areas within the basin that were determined through a judicial review by the U.S. Indian Claims Commission.

In order to continue the consultation process, we are sending under separate cover an advance copy of the DEIS: *Platte River Draft Programmatic Environmental Impact Statement* for your review and comment. The final DEIS will be sent to all American Indian Tribes and Nations that had land claims in, or historical ties to the area in January 2004 when it is expected to be released to the public.

As a result of our consultations with you and the BIA, the ITA section of the DEIS acknowledges that the southern border of the 1851 and 1868 Ft. Laramie Sioux Nation Treaty areas include the North Platte River. The fact that the monetary compensation from the Claims Court cases was not accepted by the Sioux Nation with the primary goal of regaining the 1851 and 1868 treaty lands is also stated in the ITA section. However, at present, it is noted that there have been no further legal actions taken by the Sioux Nation in attempts to acquire water rights.

We would like to have any comments you or your representatives may have by November 18, 2003 in order for us to incorporate them before the DEIS is released to the public. Please contact Rebecca Redhorse to further discuss any concerns you may have. Ms. Redhorse can be reached at (303) 445-2095, or via email at rredhorse@prs.usbr.gov.

Sincerely,

Curtis A. Brown, Study Manager
Platte River EIS Office

cc: (without enclosures)

Kenney (W-6100)
Lechefsky (GP-4200)

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SOUTHERN UTE INDIAN TRIBE

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FEB 06 2003
2/6/04 CAB PC-900

January 28, 2004

Attn: Ms. Redhorse
BLM, Platte River EIS Office
P O Box 25007
Denver, CO 80225

Subject: Platte River Endangered Species Recovery Program

Dear Ms. Redhorse:

I have reviewed your letter of January 22, 2004, and, at this time, believe there are no known impacts to areas of Native American Cultural sites that are sensitive to this Tribe in regards to the proposed recovery program for the endangered species, also is the Beaver included. In the event of inadvertent discoveries of Native American sites, artifacts, of human remains, this Tribe would appreciate immediate notification of such findings.

Should you require additional comments or have any questions, feel free to contact me, at the number listed below, extension 2209.

Sincerely,

Neil B. Cloud

Neil B. Cloud
NAGPRA Coordinator

Cc: Howard D. Richards Sr., Chairman
Southern Ute Indian Tribe

P.O. BOX 737 • IGNACIO, CO 81137 • PHONE: 970-563-0100

SOUTHERN UTE INDIAN TRIBE

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AUG 02 2004

DATE	INITIALS	CODE

July 21, 2004

Mr. Curtis A. Brown
Study Manager
Bureau of Reclamation & Fish & Wildlife Service
PO Box 25007
Denver, Colorado 80225

Re: Platt River Endangered Species Recovery Implementation Program

Dear Mr. Brown:

I have reviewed your letter regarding the Platte River Endangered Species Recovery Implementation Program. The Southern Ute Indian Tribe appreciates notification of the public hearing dates and locations.

Should you have any questions or require additional information, please do not hesitate to contact me at the number listed below, extension 2209.

Sincerely,

Neil B. Cloud

Neil B. Cloud
NAGPRA Coordinator

Cc: Howard D. Richards Sr., Chairman
Southern Ute Indian Tribe

P.O. Box 737 • Ignacio, CO 81137 • Phone: 970-563-0100

United States Department of the Interior

BUREAU OF RECLAMATION & FISH AND WILDLIFE SERVICE
Platte River EIS Office
PO Box 25007
Denver, Colorado 80225-0007
303-445-2096

IN REPLY REFER TO:

PL-100
ENV-6.00

MAR 13 2004

Chairman Clifford McKenzie
Kiowa Tribe of Oklahoma
P.O. Box 507
Carnegie, OK 73015

Subject: Extension of Public Comment Period on the Draft EIS

Dear Chairman McKenzie,

Your agency recently received copies of the Draft Environmental Impact Statement for the Platte River Recovery Implementation Program (DEIS). The notice of availability for the DEIS was published in the **Federal Register** on January 26, 2004 (69 FR 3600), with the public review and comment period originally scheduled to end April 2, 2004. It was the intent of the Bureau of Reclamation (Reclamation) that the comment period for the DEIS overlap with the release of the National Academy of Sciences (NAS) report, entitled, "Endangered and Threatened Species in the Platte River Basin" that was expected January 30, 2004. Because the NAS report has been significantly delayed, Reclamation is extending the review and comment period for the DEIS to June 2, 2004, to allow the public the opportunity to have both reports available during the DEIS review and comment period.

Please submit any comments you have on the DEIS to this office on or before June 2, 2004. Public hearings on the DEIS will be held during the month of May. Times and locations will be announced in the **Federal Register** and local media.

Written comments on, or requests for copies of, the DEIS should be addressed to the Platte River EIS Office (PL- 100), PO Box 25007, Denver, Colorado, 80225-0007, telephone 303-445-2096, or by sending an email to platte@prs.usbr.gov.

Sincerely,

Curtis A. Brown

Curt Brown
Study Manager

CROW TRIBE EXECUTIVE BRANCH

P.O. Box 159
Crow Agency, Montana 59022
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Crow Country

U.S. Depart. Of Interior
Platte River EIS Office
P.O. Box 25007
Denver, CO 80225

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DATE	INITIALS	CODE

August 2, 2004

Pursuant to oral tradition and oral history the Apsaalooke (Crow) Nation have been in this area from the White (Milk) River to the North Platte River, longer then the tepee rings that are scattered throughout our land.

Our cultural, religious, and sacred sites are all scattered throughout this area dating back 5,000 years. If archeological data were used appropriately many of the Indigenous Nations who claim this area would find themselves elsewhere, it was the white society who pushed them onto us from the east, south, west, and the north commencing early sixteenth century.

Many of our cultural, religious, and sacred sites have been disturbed, destroyed, and desecrated by other Indigenous groups who know nothing about them. For instance the Big Camp Site (Medicine Wheel), is the origin of our Apsaalooke (Crow) Sun Dance dating back four hundred fifty (450) years. We do not disturb our sacred sites especially our fasting sites, we never occupy another man's fasting site because we know nothing of the Spirit Patron/Power who visited there, and if there was an exchange of Power or Sacred Items, we know nothing about the protocol and the procedure of that sacred way.

Although this area is vast we want to be consulted on all matters transpiring since 3,000 B.C. We originated in the Ohio Valley, we were all one mankind until someone wanted to fight, they wanted warfare, so we were put to the test to prove if we were men or not. We became Biiluke, On Our Side, we came to the Big (Missouri) River, we became farmers and farmers. We emerged onto the plains with the bare necessities in search of a certain Sacred Tobacco Plant which was to be found in a mountainous region, we found the Sacred Tobacco Plant on the eastern slopes of the Big Horn Mountains under Cloud's Peak, Where Raven Owner Was Attacked, near the present site of Story, Wyo.

We do not claim the Ohio Valley and the Dakotas, Canada, and Mexico areas where we have been but we do claim the area designated by our great leader, Blackfoot, as the area within the four base tepee poles as described by Blackfoot on September 17, 1851. It is

not of treaty rights that we claim this area but it is of our inherent rights, first there, first right.

George Reed Jr.

George Reed, Jr.
Secretary of Cultural Ed.

United States Department of the Interior

BUREAU OF RECLAMATION & FISH AND WILDLIFE SERVICE

Platte River EIS Office
PO Box 25007
Denver, Colorado 80225-0007
303-445-2096

Attachment ITA-7

IN REPLY REFER TO:
PL-100
ENV-6.00

JAN 22 2004

Minnesota Mdewakanton Sioux
Chairman Ann Larsen
Community Center
P.O. Box 308
Morton, MN 56270-9801

Dear Chairman Larsen,

The states of Nebraska, Wyoming, and Colorado, and the U.S. Department of the Interior have worked in partnership to develop a Platte River Endangered Species Recovery Program (Program). We have enclosed a copy of the Program Draft Environmental Impact Statement (DEIS), which is now being released to the public. The main goals of the Program, analyzed in the DEIS, are to:

- Improve and conserve habitat for four threatened and endangered species that use the Platte River in Nebraska: the whooping crane, piping plover, least tern, and pallid sturgeon.

- Enable existing and new water uses in the Platte River Basin to proceed without additional actions required beyond the Program for the four species under the Endangered Species Act.

The actions described in the DEIS focus on improving habitat in the Lexington to Chapman, Nebraska reach of the Central Platte River, referred to as the Habitat Area, by changing upstream reservoir operations and acquiring land. Habitat would be improved primarily by providing additional or modified river flows to and through the Habitat Area, and by managing, leasing, or acquiring up to 10,000 acres of appropriate lands (on a willing seller/lessor basis) in the Habitat Area.

Cultural Resources

Regulations of the National Historic Preservation Act of 1966, as amended, require that Federal agencies identify American Indian tribes and nations that "might attach religious and cultural significance to historic properties in the Area of Potential Effect (36CFR 800.3(4)(f)(2))." Executive Order (E.O.) 13007 of May 24, 1996, *Indian Sacred Sites*, directs each Federal agency to accommodate access to, and ceremonial use of Indian sacred sites on Federal lands (including

leased lands and rights-of-way) by Indian religious practitioners, and to avoid adversely affecting the physical integrity of sacred sites. Consultation with tribes is to occur in compliance with the Executive memorandum of April 29, 1994, *Government-to-Government Relations with Native American Tribal Governments*.

As part of the consultation process, we informed your Tribe or Tribal Nation in a letter (copy enclosed), dated August 10, 2000, that a draft programmatic Environmental Impact Statement (DEIS) was being prepared, and requested any comments regarding cultural resources. As a result of August 10, 2000 consultation letters to 41 American Indian Nations and Tribes with historical ties to the Program area, we received two responses. A letter from the Pawnee Nation, dated August 30, 2000, stated that while it had no objections to the Program, it acknowledged that there might be burial sites in the area. In a letter dated December 4, 2000, a Rosebud Sioux Tribe Sicangu Lakota Treaty Council representative encouraged us to provide any cultural resource survey work completed for review and comment.

On October 10, 2003, a letter was mailed to the two Tribes, the Pawnee Nation and Rosebud Sioux Tribe, that had responded and commented earlier about the Program. The letters transmitted a working draft version of the DEIS, and highlighted cultural resources findings, and requested comments. No comments were received.

In continuation of the consultation process, we enclose a copy of the DEIS: *Platte River Draft Programmatic Environmental Impact Statement* for your review and comment. Consultations with the Colorado, Wyoming and Nebraska State Historic Preservation Officers (SHPOs) are also ongoing.

An important point to keep in mind is that the DEIS is programmatic. At this point, broad-scope proposals are offered with a general analysis of impacts. Any site-specific actions that would result from adoption of the broad program will be analyzed and reported in separate, future National Environmental Policy Act (NEPA) documents before they are implemented. Similarly, due to the programmatic nature of the DEIS, a definite Area of Potential Effect cannot yet be completely delineated, which means that, although some initial cultural resource survey work has been completed, the majority of it will have to be completed later.

There are several primary Program actions described in the DEIS: Reservoir operation changes, some construction, and land management, all of which have the potential to impact cultural resources. Changes in reservoir operations could affect unspecified cultural resources at Seminoe Reservoir due to potentially lower reservoir levels. Construction and land management activities would result in ground-disturbing activities at recharge sites in the South Platte Basin and in the Habitat Area in the Central Platte Basin that could potentially impact unspecified cultural resources.

To summarize cultural resources work to date, a partial, preliminary class I survey was conducted using literature and archival searches from the Nebraska SHPO on January 16, 2003, for Central

Platte Habitat Area lands near the Platte River in central Nebraska. The survey covered an area approximately 6 miles wide centered on the Platte River and extending from approximately Maxwell in Lincoln County to Central City in Merrick County, Nebraska. The file search identified 106 historic properties and 67 archeological surveys that have taken place within this locale. This search also identified that less than 1 percent of the total area searched has been the subject of recent class III surveys.

Some early components of a class I survey were initiated for the North Platte reservoirs using archival searches, and the preliminary results are displayed in the table below.

North Platte Reservoirs	**Summary of Initial North Platte River Reservoir Survey File Search Findings**			
	Total Acres Subjected to Previous Class III Surveys	**Sites Eligible for NRHP (or currently listed)**	**Sites Ineligible for NRHP**	**Sites Not Yet Evaluated**
Pathfinder Reservoir	1,602 acres	7 sites (5 are contributing elements of the Pathfinder Historic District	15 sites	11 sites
Alcova Reservoir	3,372 acres	2 sites	12 sites	research in progress
Seminoe Reservoir	530 acres	13 sites	10 sites	10 sites
Glendo Reservoir	7,745acres	39 sites	38 sites	12 sites
Guernsey Reservoir	423 acres	16 sites	12 sites	6 sites
Lake McConaughy	Only a small percentage of the shoreline around the reservoir has been surveyed and a number or archaeological sites were located. The dam has been determined eligible to the NRHP as a contributing feature to the Kingsley Dam Project.			

On-the-ground, class III surveys for other Areas of Potential Affect would be required in conjunction with more detailed planning of site-specific activities.

Indian Trust Assets (ITAs)

Each Department of the Interior bureau must identify any potential effects on Indian trust assets (ITA), explicitly address them in planning documents, and conduct consultation in a government-to-government manner, as required by the National Environmental Policy Act (NEPA), Departmental Manual (Part 512 DM 2), 64 Stat. 1262 and other guidance. You may recall that we informed you in a letter, dated November 13, 2000, that a Program was being developed and that a draft programmatic Environmental Impact Statement (DEIS) was being prepared, and asked if there were any ITAs in the area.

As a result of our November 13, 2000 consultation letters to the Otoe-Missouria Tribe, Omaha Tribe, Northern Cheyenne Tribe, Arapaho Tribe, Cheyenne-Arapaho Tribe of Oklahoma, Pawnee Nation, and Sioux Nation Tribes, we received one response which was from the Rosebud Sioux Tribe. In the letter, dated December 4, 2000, a representative of the Sicangu Lakota Treaty Council responded by stating that the southern border of the Sioux Nation Treaty area includes the North Platte River, and that as a result, the Sioux Nation may have water rights issues to be addressed.

Since we are also required to include the Bureau of Indian Affairs (BIA) in the ITA identification and consultation process, we had sent a September 2000 letter to the Regional Director BIA Great Plains Regional Office in Aberdeen, South Dakota, explaining the Program and requesting any information they may have about ITAs in the Platte River Basin. In September 24, 2001, BIA responded that there are no trust properties within the project area boundaries. The letter also stated that there are judicially established Indian land areas within the basin that were determined through a judicial review by the U.S. Indian Claims Commission.

As a result of our consultations with you and the BIA, the ITA section of the DEIS acknowledges that the southern border of the 1851 and 1868 Ft. Laramie Sioux Nation Treaty areas include the North Platte River. The fact that the monetary compensation from the Claims Court cases was not accepted by the Sioux Nation with the primary goal of regaining the 1851 and 1868 treaty lands is also stated in the ITA section. However, at present, it is noted that there have been no further legal actions taken by the Sioux Nation in attempts to acquire water rights.

We would like to have any comments you may have by April 2, 2004. Please contact Rebecca Redhorse to further discuss any concerns you may have. Ms. Redhorse can be reached at (303) 445-2095, or via email at rredhorse@prs.usbr.gov.

Sincerely,

Curtis A. Brown, Study Manager
Platte River EIS Office

Enclosure

cc: Francis Morris, Repatriation Coordinator
P.O. Box 470
Pawnee, OK 74058
(w/encl)

Rosebud Sioux Tribe
President Charles Colombe
cc: Terry Gray, Preservation Coordinator
P.O. Box 430
Rosebud, SD 57570
(w/encl)

Santee Sioux Tribe of Nebraska
Chairman Roger Trudell
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Sisseton Wahpeton Sioux Tribe
Chairman James Crawford
cc: Joe Williams
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Yankton Sioux Tribe
Chairman Madonna Archambeau
cc: William Weddell
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Sprit Lake Sioux Tribe
Chairman Veletino White
cc: Ambrose Littleghost, Cultural Resources Office
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(w/encl)

Standing Rock Sioux Tribe
Chairman Charles W. Murphy
cc: Tim Mentz, THPO
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Minnesota Mdewakanton Sioux
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cc: Bob Larsen, Council Member
Community Center
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Shakopee Mdewakanton Dakota Community
Chairman Stanley Crooks
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Prior Lake, MN 55372
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Prairie Island Dakota Community of Minnesota
Attn: Chairman Audrey Bennett
5636 Virgin Lake Rd.
Welch, MN 55089

Prairie Island Dakota Community of Minnesota
Attn: Chairman Audrey Bennett
5636 Virgin Lake Rd.
Welch, MN 55089
(w/encl)

Kenney (W-6100), Pfaff (D-5300), Chada (NK-500), Coutant (GP-4200) (w/o enclosure)

Identical Letter Sent to:

Cheyenne-Arapaho Tribes of Oklahoma
Chairman Robert Tabor
cc: Melvin Romannose
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Concho, OK 73022
(w/encl)

Cheyenne River Sioux Tribe
Chairman Harold C. Frazier
cc: Jim Picott, Cultural Preservation Officer
P.O. Box 590
Eagle Butte, SD 57625
(w/encl)

Crow Creek Sioux Tribe
Chairman Duane Big Eagle
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Fort Thompson, SD 57325
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Flandreau Santee Sioux Tribe
President Tom Ranfranz
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Lower Brule Sioux Tribe
Chairman Michael G. Jandreau
cc: Scot Jones, Tribal Preservation
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Northern Arapaho Business Council
cc: Alonzo Moss
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President Geri Small
cc: Gilbert Brady
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Oglala Sioux Tribe
Chairman John Yellow Bird Steele
cc: Kevin Steele, Culture Committee
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Omaha Tribe of Nebraska
Chairman Donald Grant
cc: John Penn, Assistant Chief of Tribal Operations
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Otoe-Missouria Tribe of Oklahoma
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Northern Arapaho Tribe

Pawnee Nation of Oklahoma
President George E. Howell

Upper Sioux Community of Minnesota
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