



MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes * Fort Berthold Indian Reservation

Tribal Business Council

Tex "Red Tipped Arrow" Hall
Office of the Chairman

Written Testimony of Tex G. Hall, Chairman Mandan, Hidatsa and Arikara Nation of the Fort Berthold Reservation

Oversight Hearing on Impacts of Environmental Changes on Treaty Rights, Traditional Lifestyles, and Tribal Homelands

**Senate Committee on Indian Affairs
July 19, 2012**

Introduction

Good afternoon Chairman Akaka, Vice Chairman Barrasso and members of the Senate Committee on Indian Affairs. My name is Tex Hall, or Ihbudah Hishi, which means "Red Tipped Arrow." I am the Chairman of the Mandan, Hidatsa and Arikara Nation of the Fort Berthold Reservation (MHA Nation). I appreciate the opportunity to present this testimony and I hope that the Committee will take legislative action in response to the testimony presented today.

Environmental changes have had a tremendous impact on our treaty rights, traditional lifestyles and tribal homelands. The most significant and disastrous environmental changes we face have been at the hands of the Federal government treating our lands as public lands. First, the Federal government flooded our most valuable homelands and economic resources for the public purposes of navigation, irrigation and flood control on the Missouri River. Then, the Federal government expanded its authority over our lands, displacing tribal authority and, in some significant cases, applying public lands policy to Indian lands.

Despite these actions, we all know that Indian lands are not public lands. Fort Berthold Reservation lands are not public lands. Our lands were set aside by treaty for the use and benefit of the MHA Nation. Our treaties intended that we would manage our lands and use our resources for the benefit of our communities as we see fit. Outside Environmental groups or other members of the public have no right to dictate or influence how we develop our land or our resources. Unfortunately, the Federal government often violates this basic principle. Whether flooding our lands for public purposes or imposing public lands policy, the Federal government caused disastrous environmental changes and displaced traditional tribal authority for managing our lands. We need greater protection from these environmental changes and we need to restore tribal authority so that we can adapt to the ongoing environmental impacts we face.

Congress and this Committee must do more to support us in this effort. We have long been living in the era of self-determination, yet Federal actions, laws and policies continue to

unnecessarily intrude on tribal governments or limit our ability to utilize our resources. We need this Committee to lead Congress and propose legislation that will prevent our lands and resources from being treated as public lands and will promote returning authority over our lands to our tribal government. Only with these protections and authorities will we be able to adapt to the environmental changes we face and be able to manage our resources to sustain our rights, lifestyles and homelands.

Impacts from Environmental Changes

Little more than a generation ago, in the 1950's, the MHA Nation's most abundant and fertile resources were flooded by the massive Garrison Dam, one of a number of dams constructed as a part of the Pick-Sloan Missouri River Basin Project. Originally authorized by the Flood Control Act of 1944, Pub. L. No. 78-534, § 9, 58 Stat. 891 (1944), the Pick-Sloan Project was intended to fulfill national public purposes of flood control, navigation and irrigation. However, from the MHA Nation's perspective the Project was an appropriation of Indian lands and resources for public purposes.

The MHA Nation was pressured and steam-rolled into signing away our prime river bottom lands in the 1940's to make way for Garrison Dam. Other sites were available to construct the Dam, but the site that would flood the most Indian lands and have the least impact on non-Indian towns was selected. Even with tribal resolutions opposing the Dam, by May of 1948, MHA Nation Chairman George Gillette had little choice but to travel to Washington, D.C. to sign the final agreement with the Department of Interior. A photograph of that event shows Chairman Gillette weeping as Interior Department officials sign away our trust lands to be flooded for public purposes by Garrison Dam's giant reservoir, Lake Sakakawea. Chairman Gillette said, "Right now, the future does not look too good for us." I have attached to my testimony an article from a North Dakota historical foundation that describes those events and that includes this photograph.

As a result of this Project and its public purposes, the MHA Nation's land and most of our social and economic resources were devastated. The Garrison Dam flooded more than 156,000 acres of our Reservation. It flooded much of our prime agricultural lands, 84 percent of our roads network, more than 400 homes, our Hospital, schools and churches, and 90 percent of our tribal membership was forced to relocate to higher ground. The Dam also flooded forests and wildlife that MHA Nation members harvested.

The Missouri River and its rich bottom lands provided infrastructure and an economy that sustained us. These days, the Missouri riverbed is used to produce hydroelectricity, the water is used by municipalities and for irrigating the Great Plains, commerce travels up and down the river, and flat water recreation is provided. Promises were made that the MHA Nation would also receive many new benefits with the construction of this Project, but these promises have not been fulfilled.

Compensation provided to the MHA Nation was far too little to make up for what was lost and did not compensate us for the use of our lands to provide hydroelectric power and

navigation. In addition, projects to make the MHA Nation whole were promised but not fulfilled, including: irrigation and drinking water systems, preferential electric power, financial assistance for reservation farms, development of recreational shoreline opportunities, and replacement of infrastructure that was flooded. These promises remain unfulfilled and the new economy brought by Garrison Dam provides little benefit to the members of the MHA Nation, yet we live daily with the most impacts.

To adapt to these changes, the MHA Nation is forced to develop new economic opportunities while we continue to seek the recovery of our traditional economic resources. However, impacts from the flood persist. For example, the flooding divided our Reservation into six isolated segments, making it difficult and costly to provide basic government services. Currently, we use the funding that was intended to compensate us for the flooding to pay for the shortfall in federal programs providing services to the Reservation. The failure of the Federal government to fulfill promises of electric and irrigation infrastructure, as well as a lack of full compensation, damaged the MHA Nation's economy to the point where we are still working to recover.

Impacts from Treating Indian Lands as Public Lands

While the MHA Nation is working to overcome these ongoing environmental impacts and restore our tribal economy and authority, the Federal government continues to treat Indian lands as public lands by imposing public lands laws and policies on our lands. This has two negative consequences for Indian lands. First, the Federal government is replacing its own trust responsibility for Indian lands and with public interest standards that violate both our treaty rights and the federal trust responsibility to the MHA Nation. Second, tribal authority is displaced and limited by these federal authorities. The result is that our lands are managed according to public interest standards by federal bureaucrats who are influenced by a powerful environmental lobby that seeks to impose its views on how we develop our resources. Meanwhile, the MHA Nation is denied the tools and authorities we need to reestablish our rights, maintain our lifestyles, and regrow our economy.

The best example of this is the MHA Nation's efforts to rebuild its economy with the energy resources located on our Reservation. In these times, our most abundant economic resources come from the Bakken Shale Formation underlying the Reservation. The Bakken Formation is the largest continuous oil accumulation within the lower 48 states. In 2008, the United States Geological Survey estimated that the Bakken Formation contains between 3 billion and 4.3 billion barrels of recoverable oil or more.

In the past four years, oil and gas development on the Fort Berthold Reservation went from zero producing wells to almost 300. In 2012, we expect more wells to be drilled on the Reservation than were drilled in the first four years combined. In 2013, we expect another 300 wells to be drilled.

The economic benefits of this oil and gas development are far reaching and will have short term and long term benefits. The MHA Nation and other Great Plains Tribes often face

with unemployment above 70 percent. These days our unemployment is at an all-time low of 6 or 7 percent. In much of Indian Country unemployment levels that low are unheard of. More importantly, many of our members have become entrepreneurs, establishing their own businesses to support the oil and gas industry and hiring and supporting both tribal members and nonmembers alike.

At last count, we have 905 vendors providing services directly to the oil and gas industry. Each of those vendors employs between 4 and 24 people. Based on an average employment of 12 jobs per company, that is in excess of 10,000 jobs. Our energy development will result in hundreds of millions of dollars in direct and indirect economic activity and provide the MHA Nation and our members with a substantial opportunity to fund government operations and invest in our communities.

Even with these successes, the MHA Nation still struggles for every single oil and gas permit. Although we live with environmental impacts from the flooding like few have experienced, our ability to succeed and sustain ourselves is further impacted by Federal laws and policies that treat our Indian lands as public lands. Our lands are supposed to be set apart for our benefit and managed according to the trust responsibility and tribal standards. Yet, the most pervasive standards imposed in the oil and gas development process are public interest standards.

Public lands policies and standards are imposed on the MHA Nation through the National Environmental Policy Act (NEPA), the Clean Air Act, the Clean Water Act, and Bureau of Land Management (BLM) oil and gas permitting regulations. These Federal laws have a variety of impacts on the MHA Nation and our ability to manage our resources.

In some cases, these laws allow people from across the Nation to comment on and influence federal decisions on our Reservation. The MHA Nation's treaty and trust relationship is with the Federal government. The Federal government even prohibits the states and individual citizens from interfering in this Federal-Tribal relationship. But, these days, under NEPA, the CAA or the CWA, a private citizen living in Anytown, U.S.A. can file comments and impact our ability to manage and use our resources.

In other cases these Federal laws, actually impose public lands policy on Indian lands. I believe the Federal government needs to keep its public lands policies separate from its trust responsibility for Indian lands. This kind of confusion about the management of Indian lands and resources can lead to the mismanagement of our trust resources and potential litigation.

For example, the BLM is currently developing new regulations for hydraulic fracturing used in the oil and gas development process on public lands. Because the Department of the Interior has delegated some permitting responsibilities on Indian lands to the BLM, the BLM intends to apply its public lands regulations to Indian lands. This is a serious mistake. Indian lands should not be managed according to public interest standards. Indian lands should be managed according to the federal government's trust responsibility and, even better, should be managed in cooperation with tribes in a manner that promotes tribal authority.

Even Congress was clear on this point. When Congress passed the Federal Land Policy and Management Act of 1976 and created the BLM, Congress specifically stated that the BLM does not have authority on Indian lands. Congress provided BLM with authority over “public lands” and specifically said that “lands held for the benefit of Indians” are not a part of “public lands.” The MHA Nation should have the right to be excluded from BLM regulations for public lands. If we do not have the right to determine for ourselves if a public land regulation is in our best interest or not, then it will result in our treaty rights and our sovereignty being made subordinate to public lands policies, in violation of the federal government’s trust responsibility and our treaty rights.

Finally, the application of NEPA and other Federal public land laws and policies on our lands displaces the authority of MHA Nation to manage and regulate its own resources. The MHA Nation should have the right to make its own decisions on how our resources are used and developed. We know how best to protect our land. We have done it for centuries. When we need the help of our federal trustee we have always asked for it. In the case of the BLM’s proposed rule which would add an additional layer of regulation to hydraulic fracturing, I am not convinced that it is necessary in light of the existing safeguards. What does concern me is the potential chilling effect these additional regulations could put on development of our oil and gas resources, because the federal regulations impose more expensive requirements than those that industry is subject to just outside of the Fort Berthold Reservation.

Legislation Needed to Address Impacts and Promote Tribal Authority

In order to ensure that MHA Nation and other tribes can adapt to environmental changes and revitalize their economies and build new markets, Congress and the entire federal government must fulfill their solemn trust responsibility and take steps to promote the true self-determination of tribes. Congress and federal government must support laws and policies that:

- affirm and protect our treaties and our tribal government’s civil and regulatory authority over its own territory, including the authority to tax without the ever-present threat of economy killing dual state taxation of Reservation commerce;
- reduce regulatory burdens that limit tribal economic development;
- provide appropriate funding levels for tribal infrastructure needed to facilitate economic development;
- provide low interest loans and grants large enough to allow tribes to invest in the types of businesses which will enhance our long term economic growth; and
- give industry and investors incentives to partner with the MHA Nation in building and owning its own energy resources.

The MHA Nation’s struggles to develop its energy resources into long-term economic prosperity demonstrate the need for these kinds of laws and policies. Congress needs to enact legislation to clarify and reaffirm that Indian lands are not public lands. This would prohibit federal land managing agencies from regulating activities on Indian lands according to public

lands policies and ensure that Indian lands are managed for the exclusive use and benefit of Indian tribes.

Alternatively, legislation could allow the Secretary of Interior to delegate authority to the BLM to regulate oil and gas activities on Indian lands, but require that BLM develop separate and specific regulations in consultation with Indian tribes according to timelines, requiring meaningful involvement of tribes and promotion of the federal trust responsibility, treaty rights, and federal and tribal policies unique to Indian Country for any regulations or permitting processes.

To remove public involvement from the management of Indian lands, we need changes to NEPA and other environmental laws. First, Indian lands should, at the election of a Tribe, be specifically excluded from the public application of NEPA. Second, authority similar to “treatment-as-a-state” authority that is successfully used under the CAA and the CWA should be extended to all environmental laws including NEPA, and the unnecessary regulatory restrictions on achieving this status must be removed, with deadlines put in place that require federal agencies to act in a timely manner. Third, Congress should provide for the ability of Indian tribes to “contract” these environmental functions under the Indian Self-Determination and Education Assistance Act, Public Law 93-638, to obtain resources needed to implement these “treatment-as-a-state” provisions. Fourth, Congress should limit NEPA participants and participants in other permitting decisions to the affected area or reservation boundary. An environmental activist from Pennsylvania should not have a say in how we can chop our wood.

Finally, and most important, Indian tribes need the same tax revenue that other governments rely on to oversee energy development and provide infrastructure and services needed to support the energy industry. Current federal case law allows states to impose dual taxes on certain activities on Indian lands without regard to the chilling effect such a burden puts on Reservation energy development. Legislation should prohibit dual state taxation where a tribe taxes the same activity. To protect the states interests, such legislation could, under the supervision of the Secretary of the Interior, require tribes to fairly reimburse states for any substantiated services that have a nexus to oil and gas production impacts on Indian lands.

We need Congress to affirm the exclusive authority of the MHA Nation to raise tax revenues on our Reservation so that we can rely on the same revenues that state and local governments use to maintain infrastructure and support economic activity. The MHA Nation needs to maintain roads so that heavy equipment can reach drilling locations, but also so that our tribal members and others who use our roads can safely get to school or work. We also need to provide increased law enforcement, fire, emergency response, ambulance and other services to protect tribal members and the growing population of oil workers. And, we need to develop tribal codes and employ tribal staff to regulate activities on the Reservation.

Under current federal case law, the MHA Nation must share its tax revenues with the State of North Dakota to avoid development killing dual taxation even though the State provides few services on the Reservation. To avoid double taxation and encourage energy development, the MHA Nation had no choice but to enter into a one sided tax agreement with the State. While

the State is sitting on more than a \$1 billion in surplus revenue, the MHA Nation struggles to make ends meet and keep up with demand.

Just on our Reservation, in 2011, the State collected more than \$75 million in taxes from oil and gas development on the Reservation, but spent less than \$2 million of that for state roads on the Reservation and \$0 for BIA and tribal roads. If the Tax Agreement is not corrected, projections are that the State will get more than \$100 million in oil and gas tax revenues from the Reservation in 2012. This is funding that the MHA Nation needs to maintain Reservation infrastructure so that we can support energy and economic development on our lands the same as the State.

The MHA Nation has current unmet needs, including the need to repair damages and pay for the impacts that the same companies that the State is taxing are causing. If we raise our tribal tax rates to meet these needs, the oil and gas businesses who are currently operating on our Reservation can simply move off the Reservation to avoid any dual taxation, and if we do not raise our tribal tax rates, we cannot pay for the actual governmental costs we are incurring and the actual damage our roads and other infrastructure is sustaining. To put an end to this problem, Congress should clearly affirm the exclusive tribal authority to tax activities on Indian lands. Where the State provides services on the Reservation, the State can be fairly reimbursed out of that tribal tax revenue.

Conclusion

Chairman Akaka and members of the Committee, thank you again for the opportunity to testify today on the environmental changes the MHA Nation has suffered at the hands of the Federal government. We hope that you will propose legislation that will ensure that tribal lands will never be used again to fulfill public purposes and return to us the authorities we need to protect our rights, homelands and lifestyles.

“Past Times” Article on Flooding of Fort Berthold Economic Resources

THE
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SPRING MMIX, DAKOTA TERRITORY

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Defending Their Lands

The Struggle of Three Tribes to Save Their Reservation in the 1940s

By Robert J. Hanna

“The principles that we fought for in this last war, right beside you, was for the very homes, lands, and resources that you are trying to take from us today.”

—Mandan, Hidatsa and Arikara Nation Councilman Mark Mahto, Washington, D.C., July 17, 1947.

It was a bitter irony. During World War II, while 250 Mandan, Hidatsa and Arikara Indians—half the adult men from their reservation—were away fighting to protect their country and homes, their country was making plans to destroy their homes instead. In 1944, Congress approved a plan to build a dam that would flood the core of the Fort Berthold Reservation and the homes of 90 percent of the reservation's people.

These three tribes had lived along the Missouri River for hundreds of years. They built their culture around the river,

locating their earthlodge villages on bluffs overlooking its banks and farming the river bottoms. Every spring they depended upon the Big Muddy to flood its banks, laying sediments as fertile soil and watering the ground. The floodplains were divided into vast

stretches of fenced fields where the women raised enough corn, beans, squash, and sunflowers to feed their families and trade with other tribes. Tens of thousands of people thrived here until the late 1700s. Then, beginning in 1781, a series of smallpox epidemics



Photograph Courtesy of the Associated Press
Fort Berthold Tribal Council Chairman George Gillette weeps as J.A. Krug signs the contract to purchase reservation lands for the construction of Garrison Dam.

began that killed all but a few hundred people within a century. Still, the tribes persevered. In 1862, they banded together to form what is now called the Mandan, Hidatsa and Arikara Nation.

At that time, their reservation history was beginning. The

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The Battle of the Washita

The following article was originally published in the New York Times on Feb. 14, 1869:

“The St. Louis Democrat publishes the following private letter from a participant in the battle of Washita, Idaho, which gives some of the secret history of that fight, and accounts for the fact of Maj. ELLIOTT and his men being reported missing:

Fort Cobb, I.T., Dec. 22, 1868.

MY DEAR FRIEND: I wrote to you from Camp Supply, which place we left on the 7th, arriving at

this post on the evening of the 18th. On the 11th we camped within a few miles of our ‘battle of the Washita,’ and Gens. SHERIDAN and CUSTER, with a detail of one hundred men, mounted, as escort, went out with the view of searching for the bodies of our nineteen missing comrades, including Maj. ELLIOTT.

The bodies were found in a small circle, stripped as naked as when born,...and nearly all had been horribly mangled in a way delicacy forbids me to mention. They lay scarcely two miles from

the scene of the fight, and all we know of the manner they were killed we have learned from Indian sources. It seems that Major ELLIOTT's party were pursuing a well mounted party of Cheyenne in the direction of the Grand Village, where nearly all the tribes were encamped, and were surrounded by the reinforcements coming to the rescue of the pursued before the Major was aware of their position. They were then out of sight and hearing of the Seventh Cavalry, which had remained at

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The River Be Dammed

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government and the tribes signed the Fort Laramie Treaty of 1851, in which the government agreed to recognize much of the traditional lands of the tribes as belonging to them—an area of 12.6 million acres. But, over the years a process began in which more and more reservation lands were taken away and the very concept of the reservation itself was degraded. In 1870, the reservation was arbitrarily reduced by executive order. It was reduced again in 1880, down to 1.2 million acres, to allow the government to give free land to the Northern Pacific Railroad, which it was to sell to settlers. Then, in 1887, the General Allotment Act determined that the tribes would no longer hold the reservation in common, but rather each head of household would be assigned a 160-acre plot from the reservation. Any reservation lands left over—indeed the majority of the reservation—could be sold to the government. The tribes were essentially strong-armed into doing so several times until 1910. By then, the reservation was one twelfth its original size, with even less of its land under the ownership of Three Tribes members.

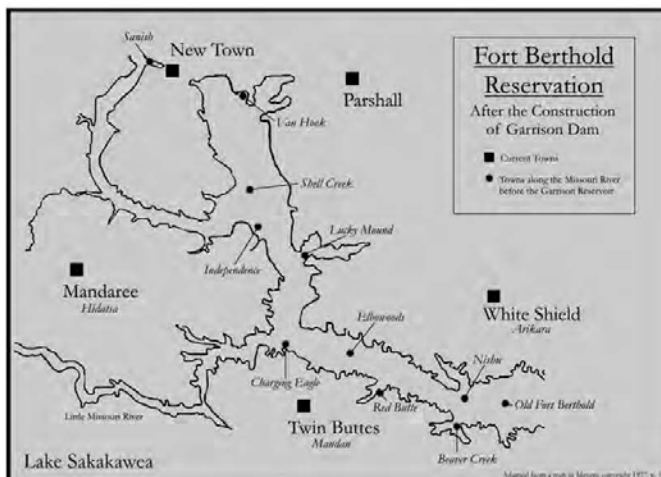
But, if any comfort was left to them it was that they still had the river bottomlands. Their towns of Elbowoods, Nishu, Red Butte, Charging Eagle, Lucky Mound, Independence, Shell Creek, Beaver Creek and Square Butte punctuated long stretches of farmland and beautiful cottonwood forests. The soil there was among the most fertile on the Great Plains. The tribes carried on their thousand-year tradition of farming in the river valley, adding wheat to their more traditional crops. Many also invested in cattle and made ranching the reservation's second main industry. They did so well that during the depression of the 1930s, even though they also faced poverty, their economy survived better than that of surrounding white areas—many impoverished white people survived the depression by getting jobs on Three Tribes farms and ranches. Even during the Second World War, while so many of the men were away, the farms managed to

increase production.

But, far downstream, things were not going well. The year 1943 saw one of the largest floods recorded along the Missouri, claiming several lives and destroying millions of dollars of property. The Missouri had always been an unpredictable river, prone to flood one year and drop so low another that it was unnavigable. The nation was persuaded to do anything necessary to stop it, and when the waters started lapping into the streets below the Omaha office of Colonel Lewis Pick of the Army Corps of Engineers, no one was more persuaded than he. Sent away to Omaha after bungling the design of an Army Air Corps training facility (it had to be shut down after it was determined that the runway was impossible to land on), Pick now found himself called upon to design a flood-control plan for the entire Missouri basin. Developed in just 90 days and only 10 pages long, the Pick Plan called for almost the entire length of the upper Missouri River to be converted to a series of five artificial lakes, with the intended result of not only controlling flooding, but also ensuring enough water for permanent navigation on the lower Missouri. The plan naturally won the favor of downstream states.

Meanwhile, Glenn Sloan of the Bureau of Reclamation office in Billings, Mont., had been working for the last three years on another proposal for controlling the Missouri. The Sloan Plan did not provide for downstream navigation, but it did provide for irrigation of otherwise arid farmland upstream and, of course, the control of flooding. It involved three fewer dams on the main stem of the Missouri and more small ones on its tributaries. Naturally, it was favored by the upstream states.

The two competing plans led to long and loud debates between Pick and Sloan, between the Army Corps and the Bureau



Adapted from a map in Meyers, copyright 1977.

The construction of Garrison Dam flooded several Fort Berthold communities and resulted in the creation of five new towns, all away from the newly-flooded river bottoms.

of Reclamation, between the downstream and the upstream states, and between their corresponding congressmen. Finally, President Franklin D. Roosevelt ordered the corps and the bureau to design a compromise plan. Quickly realizing that neither side would give ground, they decided in a one-day meeting to simply combine all the proposed dams and projects of each side without even considering whether there would be enough water in the Missouri Basin for the combined goals of both agencies. The resulting Pick-Sloan Plan was approved by Congress as part of the Flood Control Act of 1944.

Neither side gave much consideration to Fort Berthold or the many other reservations that would be affected by the dams. Taking land for a public works project from Indian reservations was very different from using eminent domain laws to take it from private citizens. Reservation land was protected by treaties in which the government had promised to recognize the lands of the Three Tribes as theirs forever. According to the legal situation in force by that time, much of the land to be flooded was held in trust by the United States Government for the tribes. But four of the five artificial lakes to be created from the Missouri would fall on reservations, and the Three Affiliated Tribes would

be hit hardest. Ninety percent of the people lived on land that was to be flooded by the Garrison Dam, not to mention every one of their towns. The July 1, 1943, issue of the *Sanish Sentinel* quoted a memo from Department of the Interior Solicitor Felix S. Cohen to Indian Commissioner William Brophy as saying, "the Garrison site was selected by reason of the fact that a large proportion of the inundated area would be composed of Indian lands."

The Three Tribes' first indication that their homeland was in danger was in the spring of 1943 when engineers and small red surveyors' flags were noticed around Garrison and Elbowoods. The *Stanley Sun* was the first to break the news to the tribes that the government was planning a dam. The *Sun* reported that the engineers were trying to determine where exactly it would be built.

Once the Pick-Sloan plan was approved, the Army Corps unleashed major advertising efforts to promote the dams in Missouri Basin states. Newspapers in North Dakota reported that the Garrison Dam, the first of the new dams, would be a wonder of the modern age, providing flood control, irrigation, recreation, cheap electricity and, eventually, an industrial paradise for the state, not to mention a crystal-clear sparkling blue lake in place of the muddy Missouri. A text

was even written for the state's public schools so that school children could be informed in class about the benefits of the dam, presented as a monumental work of human technology and ingenuity.

The Three Tribes tried to defend their homes, land, cities and economic base. As early as November, 1943, the tribal council passed a resolution opposing construction of the dam because of the "untold material and economic damage" it would cause to the Three Affiliated Tribes. Members of the tribal council traveled back and forth to Washington many times in the following years to plead their case. They did not have travel money or even professional suits to wear, so dances and other fundraisers were held throughout the reservation to pay for their tickets and hotel bills, while other members sought out used suits of clothing for them in church donation barrels. The tribes hired a civil engineer named Daniel C. Walser to propose an alternative dam site. He developed a design for a dam in the northwestern part of the reservation, which would have left the majority of the reservation bottomlands intact. According to Walser, it would have achieved the same flood-control and irrigation results as the Garrison Dam, generated electricity even more efficiently, cost \$1 million less to build, and saved perhaps \$20 million in relocation costs. The Three Tribes even offered to give this land to the government for free, but the Army Corps would not consider it. Many have blamed longstanding rivalry between the corps and civil engineers.

Having approved the Pick-Sloan plan in 1944, Congress finally authorized funding for it in 1946 under the stipulation that the tribes be offered land of sufficient size and comparable quality to replace the lands to be destroyed by the dam. It looked as if the most likely area would be the land just south of the dam, in the Washburn area. However, an outcry from the local non-Indian residents quickly dampened the idea.

In May of 1946, Colonel Pick, North Dakota Governor Fred Aandahl and other officials involved with the dam met with Three Tribes members in Elbowoods. The corps hoped to persuade the Three Tribes to

accept replacement lands outside of the current reservation, but the tribes hoped to persuade the corps to consider their other dam location. One Three Tribes man expressed empathy for the white settlers who would have to be removed to give the Three Tribes additional river bottom land. "The residents of the lieu area are pioneers of the country, and I do not think it right to compel them to leave their home." The consensus of the tribes was that they could not duplicate their former lifestyle in other riverside areas. Both the tribes and the Bureau of Indian Affairs ultimately rejected the offer.

Finally, in 1947, the tribes were offered \$5,105,625 along with irrigation and free electrical power as a take-it-or-leave-it settlement for the lands to be inundated. Tribal Council Chairman George Gillette, literally in tears, signed the agreement on May 21, 1948. The *Sanish Sentinel* quoted him as saying that day, "The truth is, as everyone knows our Treaty of Fort Laramie, made in 1851 and our tribal constitutions are being torn into shreds by this contract."

Once work began on the dam, it was every bit the amazing spectacle of human might and technology the Army Corps literature had promised. An entire planned town, named Riverdale, with its own church, school, stores and recreation centers was built next to the site to house all the workers. A bridge was built over the river from which dump trucks poured stone and earth to form the dam while earthmovers worked the sides of the site. Massive turbines were constructed for the electrical generators. Meanwhile, Three Tribes members were haphazardly relocated from their precious river bottom to lands on the desolate high plains. Frequently, entire houses were moved on trailers, leaving behind ghost towns of gaping basements. Other Three Tribes members were given new housing with woefully inadequate insulation that no North Dakota resident would voluntarily chose against the harsh winters. Tribal members were not permitted to salvage the wood of the cottonwood trees. On the high plains they would no longer have access to their usual wood and coal veins as sources of fuel and heat. Government representatives told them that they would receive

sufficient electricity from the dam generators as a replacement, but the promise was never followed through.

Finally, in 1954, the dam was finished. President Dwight D. Eisenhower himself came to oversee the dam-closing celebration. After he left and the festivities died down, the Mandan, Hidatsa and Arikara watched the water slowly back up against the earth-filled wall and swallow up a little more of their doomed homeland every day for the next two years.

In addition to never receiving the power benefits, the promise of irrigation for the people's new lands never materialized. Furthermore, the swollen Missouri now divided the reservation into five distinct sections that could not be accessed except by driving many dozens of miles outside the reservation to the nearest bridges. The combined force of all these factors threw the once-growing Three Tribes economy on its side for decades. Despite repeated attempts at justice, none got very far. With their economic base destroyed and no help establishing a new one, the tribes struggled on for over 30 years.

In 1986, a Joint Tribal Advisory Committee was formed under orders from the Secretary of the Department of the Interior to examine the effects of the Garrison Dam on the people of the Fort Berthold Reservation, as well as the effects of other Pick-Sloan dams on the people of the Standing Rock Reservation. In a carefully-researched, 90-page document, the committee reported that the Three Affiliated Tribes had borne most of the expense of a dam of which they had not voluntarily accepted construction, and brought them no benefits whatsoever. Even though written in straight-forward, objective legal terminology, the document is deeply moving as one reads the long list of injustices done to the tribes. The committee pointed out that justly compensating the Three Tribes for the taking of their lands required much more than reimbursing them for the fair market value of their farmland. The river bottomland was also the essential raw material of their economy—an economy that could not be replicated on the dry high plains. Adequate compensation should consider what it would

take for the people to form some completely new kind of economic base. Furthermore, the document pointed out how the dividing of the reservation had led to serious difficulties in reaching emergency medical care, how the taking of the trees and coal veins had eliminated the tribes' energy sources in ways that the failed promise of electricity had never restored, while shabbily-insulated government-provided houses often forced families at the time to pay electrical bills of \$400 or \$500 per month in the winter. Because the land was taken in square chunks, a considerable amount of excess land around the reservoir had been taken that was not needed for the running of the dam. Health care facilities, an important bridge, schools, highways and access roads had been removed that were never replaced, despite Army Corps promises. Furthermore, the tribes were not allowed to develop picnic shelters, marinas and other recreational facilities along the lakeshore that might help their economy. Altogether, the document listed 10 changes that Congress should make to improve the fairness of the land-taking of 1948.

Once the report was sent to Secretary of the Interior Donald P. Hodel, however, he allowed it to sit on his desk for over a year. It appeared that the document would be ignored indefinitely until President Ronald Reagan, during a meeting with then-tribal chairman Ed Lone Fight and several other Native American leaders, heard about the situation and personally requested Secretary Hodel to look into the document right away. This began a long legislative process, lasting until late 1992, in which Congress agreed to pay the tribes \$149.2 million dollars to help them recover from the damages caused by the dam. Money from the electricity generated by the Garrison Dam was to be placed into a trust fund and the interest from the fund to be sent to the tribal government at regular intervals.

This amount was less than half the minimum suggested by the Joint Tribal Advisory Committee.

Of course, no amount of money or improvements will ever bring back the memories, the beauty or the thousand-year ties lost to the flood.