

**TO: TPSN, ISAP, NCECR (and MRRIC)**

**FROM: Darren J. Ranco, PhD, Indigenous Knowledge panelist on the Independent Science Advisory Panel (ISAP)**

**RE: Outreach to MRRIC Tribes regarding USACE DEIS on Fort Peck Dam Test Release**

**DATE: June 28, 2021**

**Purpose and Charge of this Memo**

Based on findings of an earlier “Discuss and Feedback” (D&F) engagement conducted by ISAP panelist Dr. John Norder that culminated in a May 10, 2021 report to MRRIC entitled “Outreach to MRRIC Tribes regarding how ISAP (and MRRIC) can help USACE and USFWS incorporate Tribal knowledge and concerns in implementing the Missouri River Recovery Program,” the National Center for Environmental Conflict Resolution (NCECR) concluded that it would be useful to allocate time from the pool of funded D&F hours to ISAP member Dr. Darren Ranco to get input from the Tribes to help inform his opinion for ISAP’s independent external peer review (IEPR) of the Fort Peck DEIS.

Dr. Norder’s D&F engagement explored with interested MRRIC Tribes how best the Tribal Cultural Knowledge expert on the ISAP should carry out his or her role, given that there are approximately 30 MRRIC Tribes,<sup>1</sup> each with its own knowledge base. One of the recommendations in Dr. Norder’s report was that the person holding this position on the ISAP could be most effective if he or she were enabled to conduct outreach to the MRRIC Tribes during any given ISAP engagement to orient MRRIC Tribal representatives to the documents being reviewed by the ISAP, and to elicit their input regarding relevant knowledge held by their respective Tribes.

On April 15, 2021, the ISAP began reviewing the Fort Peck DEIS. The ISAP’s initial comments on this review are due June 30, 2021, and the panel’s final report is due August 23, 2021. For this particular review, Dr. Darren Ranco is serving as the ISAP’s Tribal Cultural Knowledge expert. Consistent with Dr. Norder’s recommendations, RESOLVE coordinated a Tribal Interests Work Group virtual meeting on June 8th where Dr. Ranco and Aaron Quinn of USACE presented a virtual overview of the DEIS with interested MRRIC Tribes and invited them to convey to Dr. Ranco relevant Tribal knowledge from their respective Tribes, so that Dr. Ranco can bring this knowledge into the ISAP’s deliberations. (This team approach recognizes USACE as the author of the Fort Peck DEIS and thus the appropriate party to explain its contents, while Dr. Ranco can play a key role in fostering the Tribal representatives’ understanding of this material.)

After a few comments from MRRIC Tribes at the June 8th virtual meeting, Dr. Ranco targeted a small number (7) of MRRIC Tribal participants to call and email over the next

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<sup>1</sup> “MRRIC tribes” refers to any tribe that has been formally invited to be a member of MRRIC.

week to solicit more input into the DEIS. Of these, Dr. Ranco established communications with five (5) of them over phone or email, and is basing this memo on these interactions as well as the three or so comments received in the June 8<sup>th</sup> virtual meeting.

## **Findings**

In general, the interactions Dr. Ranco had with the Tribal representatives to MRRIC influenced his comments related to communicating the impacts to Tribal Cultural Resources in the DEIS. The amount of time given for this outreach was quite short (a week or so), and in the future, Dr. Ranco would recommend a much longer time to solicit input during a DEIS review.

The **findings of Dr. Ranco's outreach with MRRIC Tribes** highlight a broader set of Tribal concerns based primarily on **inadequate processes for soliciting Tribal inputs into USACE scientific reports and findings**, based on a history of actions by the USACE that have harmed Tribal lands, resources, cultures, and communities, and an ongoing set of technical, bureaucratic, and scientific orientations that appear incapable of addressing this history, or fully taking into account the range of ongoing impacts to Tribal lands, resources, cultures, and communities.

The Tribal representatives almost all felt that the **USACE did not have the interest or resources to really understand the harms created by their actions in the past, present, or future to Tribal lands, resources, cultures, and communities**. According to the Tribal representatives who offered their feedback in this short process, **the scope of potential harms as presented in the DEIS to Tribal Cultural Resources is purposely narrow, ahistoric, and unable to take into account Tribal Knowledges or definitions of harm that connect humans and non-humans in the past, present or future**. In the context of the DEIS, this is narrowed to merely looking at the potential harm to resources based on an increase discharge of water from the Fort Peck Dam, but does not allow for an overall assessment of harm due to ongoing and historic management decisions by the USACE to flood Tribal lands and submerge critical cultural and natural resources. Any potential harms created by flooding to cultural resources based on a discharge to protect a single endangered species makes it nearly impossible to understand the ongoing, historic and systemic harms caused by USACE actions. In the **scientific comments, Dr. Ranco also points out that even in the context of this narrow notion of harm or impact, the USACE uses a single scientific source from 1981 to flatten these harms or impacts even further, treating all cultural sites the same way**, even though common sense would realize that erosion and flooding impacts would be dramatically different across archaeological, historically cultural, and gathering sites.

Another key point from the Tribal representatives was also about **the inadequacy of the USACE database for historic properties and cultural sites**. A couple of the representatives pointed out that they have had to work to try and correct the database for years, often with some resistance. A core point made again and again by those who commented to Dr. Ranco, was the fact that these databases do not reflect actual tribal

knowledge traditions, or as one person put it, “They do not take our peoples science into consideration when assessing harms to their decisions!” **Following on this, Dr. Ranco recommended, in an official ISAP comment, that the USACE be far more clear in the location and use of cultural and historic property databases in their impact analysis, but this does not fully capture the critiques offered by the Tribal representatives. While capturing indigenous science into their analyses is the purpose of this D&F, the point is actually that integration of Tribal science into USACE frameworks, including frameworks and findings that define and identify harm, requires far more effort, analysis, and engagement than a D&F. Moreover, while the Tribes and the USACE both have an interest in protecting cultural locations from other kinds of harms, such as looting, the USACE, according to the perspectives give to Dr. Ranco, has gone too far into protecting or hiding this information, where it is now difficult for the Tribes to figure how accurate the site locations are in the database. Perhaps an outreach program between the USACE and each Tribe, where the database is analyzed for accuracy, will help remedy this situation.**

Furthermore, **the overall process of scientific review, consultation, and notice and comment is regarded as unfair** to most of the Tribal representatives Dr. Ranco engaged during this brief outreach process. The unfairness is related to the fact that **most Tribes do not have the resources and/or time and personnel required to review thousands of pages of technical documents that could have devastating impacts on Tribal cultural resources.** The technical reports are not particularly clear in terms of the exact locations of possible cultural harm (as referenced above), and the while USACE may seem open to Tribal scientific comments and consultation, the overall feeling from the Tribal representatives is that the USACE does not understand the difficulty of formulating technical responses for Tribes nor is the USACE willing to put in the time to walk each Tribe through the exact nature of the findings on something like a DEIS, what evidence went into these findings, and how to make these findings more reflective of Tribal knowledges.

To close this report, I wanted to offer recommendations to both NCECR the the ISAP for future ISAP reviews and USACE work related to MRRIC.

### **RECOMMENDATIONS to NCECR**

1. The process for the Cultural Knowledges expert on the ISAP to engage directly with the MRRIC Tribes during a DEIS is a solid idea—it needs a bigger lead in and time frame. I would recommend at least a month, probably two months time to do this work.

### **RECOMMENDATIONS to the ISAP—These are broader scientific issues that go beyond the specific scientific comments made by Dr. Ranco in his review in the ISAP.**

2. The USACE should broaden its definition of harm and impact to Tribal cultural resources to address historic and ongoing harms created by past USACE actions. At

the very least, as Dr. Ranco pointed out in one of his comments, the USACE should bring their cultural harm models in line with current scientific understanding of the variety of harms related to a diversity of cultural sites.

3. The USACE should make clear the sources of information related to Tribal cultural resources and how Tribes can change/address gaps in the databases used by the USACE for their findings. This is an extension of another one of Dr. Ranco's comments on the ISAP.
4. The USACE, with the help of other Federal Agencies, should consider ways to provide resources to Tribes so that the Tribes can be the lead in Agency scientific reports, especially as it relates to cultural and environmental resources. One such example of this is from the Environmental Protection Agency (EPA), which has, at times, created Direct Implementation Tribal Cooperative Agreements (DITCAs) for scientific reports, recognizing Tribal roles as experts to carry out Agency scientific functions.
5. If possible, the USACE should spend more time with each of the MRRIC Tribes during technical review of things like a DEIS. USACE scientists and engineers should go to all of the Tribal communities to learn about their concerns directly and with first hand information. True incorporation of Tribal Knowledge traditions requires a deep institutional commitment, far beyond the dictates of current USACE procedures. This is perhaps the most important recommendation if it can be addressed, and is not captured in any of the ISAP comments offered by Dr. Ranco, and would ultimately help heal elements of distrust that has built up over many generations.