

Final Minutes

Missouri River Association of States and Tribes (MoRAST) Telephonic Meeting

September 16, 2010

MoRAST Chair Mike Hayden called the meeting to order just after 2:00 p.m. central time on September 16, 2010. This was a special telephonic meeting of the MoRAST Board of Directors called primarily for action on proposed comments on the Scope of Study for the Missouri River Authorized Purposes Study (MRAPS). Chairman Hayden asked David Pope to call the roll of those Directors, Alternates and others in attendance for the conference call meeting.

MoRAST Directors, Alternates and other representatives participating by telephone:

STATE OF MONTANA: Mary Sexton, Tim Bryggman, Bruce Rich and Brian Marotz
STATE OF WYOMING: Jodee Pring
STATE OF NORTH DAKOTA: Todd Sando, Terry Steinwand, Bruce Engelhardt and Kelly Castell
STATE OF SOUTH DAKOTA: Jeff Vonk, Garland Erbele, Jim Riis and Mark Rath
STATE OF NEBRASKA: Gene Zuerlein
STATE OF IOWA: Sharon Tahtinen and Harold Hommes
STATE OF KANSAS: Mike Hayden, Tracy Streeter, Steve Adams and Earl Lewis
STAFF: David Pope, MoRAST Executive Director

Chairman Hayden asked if there were any objections or corrections to the draft agenda. Hearing none, the agenda was accepted. Mr. Hayden asked Mr. Pope to proceed with the items on the agenda. Mr. Pope provided background information and reviewed the draft comments to the U.S. Army Corps of Engineers (USACE) regarding the MRAPS Scope of Study. He noted that the comment period closes September 20, 2010.

Mr. Pope asked if everyone had received the e-mails over the last several weeks transmitting the draft document identified as Draft v4 and a new version transmitted by e-mail September 15, 2010, identified as Draft v5. He noted that the proposed draft document includes a letter and three proposed attachments (1) the MoRAST potential questions and issues document dated July 28, 2010 that MoRAST finalized and submitted to the USACE after considerable work, (2) an April 27, 2009, letter to then Assistant Secretary of the Army (CW) Woodley regarding the implementation of the Study, and (3) a May 7, 2010, letter to the U.S. Institute for Environmental Conflict Resolution which provided comments on the draft situation assessment.

Mr. Pope noted that the process to develop comments on the Scope of Study began with a draft considered by the MoRAST Joint Technical Committee at its meeting on August 10-11, 2010. After work on the draft at the meeting, it was circulated to the committee. Ultimately, Draft v4 was circulated to the Board and State/Tribal contacts for comments by e-mail dated August 27, 2010. He noted that since MoRAST had already submitted several written comments to the USACE, this approach was proposed to include a letter that attempts to summarize the key points from the three attached documents and add a few paragraphs not covered by the attached documents. He noted that the concept was designed to provide more focused comments regarding the Scope of Study and to supplement the more detailed attached letters which would still be a part of the formal comments. A reminder e-mail was circulated with another copy of Draft v4 and the proposed documents on September 9, 2010, with a draft agenda for the conference call meeting.

Mr. Pope noted that the Draft v4 letter includes introductory language, describes the three attachments and then mostly paraphrases key provisions from these attached documents that were previously submitted to the USACE. He summarized those provisions. He also summarized some new or additional comments contained in the draft letter. He noted that the letter highlights comments regarding the geographic scope of study in paragraph 2, page 2, to help bring more focus to that issue compared to the broad comments in the attached questions and issues document. Paragraph 3, page 2, indicates general concurrence with the USACE supplemental implementation guidance dated January 6, 2010. Paragraph 4, page 2, indicates that MRAPS should not supersede State or Tribal rights or analyze any alternatives that could compromise such rights or jeopardize the conditions granted by the O'Mahoney-Milliken amendment that was included in the 1944 Flood Control Act.

Mr. Pope noted that he had received a call yesterday from Sharon Tahtinen and Harold Hommes of Iowa regarding some concerns about the draft letter. As a result of that discussion, he agreed to develop proposed changes to Draft v4 to address these concerns and circulate the new draft to the Board prior to the conference call, so that the Iowa suggestions could be reviewed in advance of the call. He noted that a new Draft v5 was circulated by e-mail to the same group on September 15, 2010, along with the same documents previously circulated. Mr. Pope summarized the proposed changes to Draft v4 as shown in Draft v5 as follows:

(1) The first change would modify paragraph 2, page 1, so it does not infer that MoRAST votes to support MRAPS have always been unanimous.

(2) The second change would modify paragraph 2, page 2, wherein a sentence was added to acknowledge the interrelationship between the Missouri River and the Mississippi River. The language refers to this topic in a manner consistent with the questions and issues document to be attached. Therefore, this is not new language, but rather is intended to make the paragraph in the letter related to the geographic scope of study more complete.

(3) The third change is in paragraph 4, page 2, where two specific alternatives are provided. Sharon and Harold indicated that they preferred to delete this entire paragraph, but noted that there may be a couple of other ways to deal with their concerns so that the State of Iowa could support the letter. Alternative one would be to delete the sentence regarding the O'Mahoney-Milliken Amendment. Alternative two would be to leave the referenced sentence in the letter but add a new sentence noting that the State of Iowa disagrees with the inclusion of this paragraph in the letter. It was noted that it would also be acceptable to add this proposed sentence as a footnote at the bottom of the page, rather than in the text of the paragraph.

Mr. Pope noted that the proposed changes were his attempt to develop language to address the Iowa concerns, based on his discussion with Sharon and Harold, but that they may also want to comment.

Mr. Pope turned the matter back to Chairman Hayden to see if there were questions or if Sharon or Harold had comments regarding the proposed changes and whether new Draft v5 would resolve the Iowa concerns. Harold Hommes said he thought David did a good job addressing their concerns and appreciated his efforts as Iowa would very much like to sign on to the letter, but they need to have their concerns addressed. With regard to the first change, he noted that while MoRAST had taken action to support MRAPS on several occasions, they thought it would be more accurate to indicate that most members supported the study. He noted that Iowa and one of the Nebraska Directors had voted against the study at certain times. He said the second change was important to them because of the interrelationship between the Missouri River and Mississippi River and thought it appropriate to reiterate comments regarding that in the cover letter. With regard to the third change, he said the O'Mahoney-Milliken amendment was somewhat of a new issue to them, but upon review they were concerned that it

lends an appearance that not all issues should be considered by the study. He said they thought it was better to be open and consider everything, rather than including restrictions at this stage. He noted that their preference would be to take out the entire paragraph, but the primary concern is the second sentence in paragraph 4, page 2. They could support the letter if the second sentence is deleted or an alternative is to leave it in and include a footnote at the bottom of the page to indicate Iowa does not agree with it. He noted that they were trying to provide some latitude to address the issue, so that all members could support the letter.

Chairman Hayden asked if there were other comments on this issue. Gene Zuerlein asked Iowa if alternative two was selected, would Iowa still vote for the letter. Harold indicated that yes, if alternative two, and the first two changes suggested were accepted, then Iowa could support the letter. Gene indicated that he preferred alternative two under the circumstances. Tracy Streeter said he tended to agree with Iowa that it would be better to not put this restriction on the scope of the study and preferred alternative one. He indicated that he thought it was important to include the first sentence of the paragraph so that there would not be interference with State and Tribal water rights. Harold said they could live with the first sentence. Chairman Hayden asked Mr. Pope if he had comments or recommendations for the Board. Mr. Pope indicated that he was familiar with the O'Mahoney-Milliken amendment issue. While he did not want to advocate one option over another, he said it was his understanding that the O'Mahoney-Milliken amendment was considered a very important part of the original compromise that led to approval of the Pick-Sloan Program by Congress in 1944. He said it was his understanding that the upper basin did not want the consumptive use associated with projects that were included in the program to be jeopardized by potential requirements to release water downstream for navigation. Therefore, the amendment was designed to protect beneficial consumptive use in any State partly or totally west of the 98th meridian. Mr. Pope said while most of that development, such as large irrigation projects, did not take place, it is clear from past disputes that upstream/downstream disputes have occurred over proposed uses of water in recent years. As a result, he noted that there are strong feelings both upstream and downstream about uses important to them. The question becomes whether removal of this amendment, if ultimately done by Congress, would result in impacts to consumptive uses upstream, particularly in light of court decisions that have provided favorable language towards flood control and navigation. He said this is an important issue.

Jeff Vonk asked for clarification of the options, after which he said that his preference would be to leave in the whole paragraph (paragraph 4, page 2) but, add the footnote that Iowa disagrees with this paragraph in the letter. Mary Sexton indicated that she agreed with that as well. Chairman Hayden asked if there was any disagreement with that approach. Tracy Streeter said he still prefers the alternative one approach, to avoid the need for a footnote indicating how any given state felt about the letter. Chairman Hayden asked if there was any further discussion on the draft document. Hearing none, he said the floor was open for a motion.

Tracy Streeter moved to adopt the proposed draft comments with alternative one, which would take out the second sentence in paragraph 4, page two, and not include a footnote. There was not a second to the motion. Jeff Vonk offered a motion to adopt the comment documents with alternative two, which would leave the full paragraph (paragraph 4, page 2) in the letter, but include the footnote that Iowa disagrees with the paragraph. Mary Sexton seconded the motion. After discussion, Chairman Hayden asked Mr. Pope to do a roll call vote. The following Directors or alternates voted for the motion: Hayden, Sando, Pring, Steinwand, Sexton, Rich, Zuerline, Vonk, Erbele, Tahtinen and Streeter. No one voted against the motion. MoRAST Director Dunnigan of Nebraska was not in attendance. There were no Tribes present or identified on the call. The motion passed 11 to 0.

Chairman Hayden asked Mr. Pope to review the old business item. Mr. Pope provided a reminder of the regular MoRAST meeting scheduled for September 22 and 23rd in Rapid City, South Dakota. He indicated that there was a full agenda and he expected good attendance of around 40-45 people. In regard to the business session, Mr. Pope noted his intention to not seek renewal of his contract to serve as Executive Director that expires June 30, 2011. He indicated that since there were only two meetings prior to that time, he wanted to give the Board ample time to consider alternatives in its staff support. Chairman Hayden indicated that he regretted, but understood Mr. Pope's decision to not continue as Executive Director, and appreciated the opportunity to consider these matters in advance so that there would be a smooth transition.

Mr. Pope asked whether the Board preferred the MoRAST scoping comments approved today to be provided as a letter with three separate attachments or as a package put together as one PDF document, to submit to the USACE. Based on comments, the preference seemed to be to package it together as one document, and Chairman Hayden asked Mr. Pope to proceed that way. Mr. Pope indicated he would work with Chairman Hayden to get the letter signed and to the USACE on or before the September 20th deadline.

Since there was no further business to come before the meeting, Chairman Hayden declared the meeting adjourned at approximately 3:00 p.m.

Respectfully submitted,

//s

Sue Lowry,
Secretary

Note: These minutes were approved at the March 8, 2011 MoRAST meeting