



ASSOCIATION OF STATES AND TRIBES

September 17, 2010

Col. Robert J. Ruch
Commander, Omaha District,
U.S. Army Corps of Engineers
1616 Capitol Avenue
Omaha, NE 68102

Col. Anthony J. Hofmann
Commander, Kansas City District,
U.S. Army Corps of Engineers
601 East 12th Street
Kansas City, MO 64106-2896

RE: Scoping process comments, Missouri River Authorized Purposes Study

Dear Col. Ruch and Col. Hofmann,

The Missouri River Association of States and Tribes (MoRAST) brings together representatives of the Governors of the States of Wyoming, Montana, North Dakota, South Dakota, Nebraska, Iowa and Kansas and leaders of the American Indian Tribes in the Missouri River Basin.

Many members of MoRAST have supported approval and implementation of the Missouri River Authorized Purposes Study (MRAPS) since the need for such a study was identified in 2008. We believe the study is very important and appropriate given the changed physical, economic and environmental conditions since the Missouri River projects were authorized by the Pick-Sloan Program through the 1944 Flood Control Act (1944 FCA). Given the importance of the study and the key role States and Tribes have in the basin regarding the management and protection of water, fish and wildlife and other natural resources, MoRAST plans to actively participate in the study and offers the following comments regarding the scope of the study.

While this letter provides comments on the scope of study, it is also supplemental to three attached documents that provide more in depth comments and information related to the matter. The three additional attached documents are: 1) a document prepared by MoRAST dated July 28, 2010 and entitled "Missouri River Authorized Purposes Study, 1944 Flood Control Act, Potential questions and issues to be studied" (Questions and Issues document) which will be further described below, 2) a letter from MoRAST to the Assistant Secretary of Army (CW) dated April 27, 2009 regarding implementation of MRAPS (then referred to as the Section 108 study). While the letter refers to the implementation of the study, it also includes considerable information related to the scope of the study. and 3) a letter from MoRAST dated May 7, 2010 to the U.S. Institute for Environmental Conflict Resolution regarding the Situation Assessment

Report prepared by the Osprey Group and the importance of input, involvement and collaboration of States, Tribes and the public during the implementation of MRAPS.

In order to provide collective input from the States and Tribes that participate in MoRAST, the association has spent many months developing the attached Questions and Issues document that we hope will be useful to the U.S. Army Corps of Engineers (USACE) in the determination of the scope of the study. The Questions and Issues document includes considerable background information, but its primary purpose is to provide guidance on each of the authorized purposes and other issues or potential purposes. It also contains specific questions members of MoRAST believe need to be examined by the study, while recognizing that the primary purpose of MRAPS is to determine whether changes need to be made to the 1944 FCA as well as Federal water resources infrastructure in the basin. However, as noted in the Questions and Issues document, the examination of these questions should not be done in isolation and should address trade-offs involved in addressing the concerns. This may involve analyzing a range of packages or scenarios for the river that include both operational and other elements. Analysis of questions and scenarios should include examination of economic cost-benefit, ecosystem goods and services, and social and cultural effects.

MoRAST recommends that the geographic scope of study focus on the Missouri River mainstem, tributary projects that are currently operated in conjunction with the mainstem or federal projects for which such operations could better optimize benefits consistent with current needs, and federal tributary projects for which States or Tribes have identified a need to consider a change in project purposes. The study should review existing federal water resources infrastructure of these agencies as well additional infrastructure needed to satisfy essential future water needs in the basin. MoRAST also recognizes the interrelationship between the Missouri River and the Mississippi River. It supports evaluation of this relationship within the scope of study to the extent defined in Items A and E of the attached Questions and Issues document dated July 28, 2010.

MoRAST has reviewed the USACE Supplemental Implementation Guidance for Division C, Title I, Section 108 of the Omnibus Appropriations Act of 2009 (P.L. 111-8) – Missouri River Projects, Missouri River Basin dated January 6, 2010 in regard to the scope of the study. In general terms, we concur with the guidance set forth in this Memorandum.

MoRAST expects that any results due to MRAPS will not supersede State or Tribal Rights, nor will MRAPS analyze any alternative that could compromise State or Tribal Water Rights. Furthermore, any results of MRAPS should not jeopardize the conditions granted by the O'Mahoney-Milliken Amendment in the 1944 Flood Control Act.¹

The Missouri River Basin American Indian Tribes, States and Federal agencies all have overlapping and at times unique jurisdiction and expertise related to the Missouri River. Therefore, it is critical they be invited to be involved as Cooperating Agencies throughout MRAPS. The process used should allow the Tribes and States to be fully involved throughout the study. It is also noted that involvement of American Indian Tribes as Cooperating Agencies does not fulfill trust responsibilities of the Federal Government. The USACE will still be

¹ The State of Iowa disagrees with the inclusion of this paragraph in the letter.

required to consult with the Tribes on a government to government basis beyond this process, but active inclusion and involvement of the Tribes in the study will hopefully improve communications and facilitate Tribal input throughout the study.

In addition to the involvement of States, Tribes and other Federal agencies as Cooperating Agencies, it is critical that the USACE provide an effective process to inform and involve the public and various stakeholder interests during the implementation of MRAPS. As we noted in our letter of May 7, 2010 to the U.S. Institute for Environmental Conflict Resolution regarding the Situation Assessment Report prepared by the Osprey Group, MoRAST generally agrees with the conclusion in the report that a combination of activities should be used to simultaneously inform and enhance collaboration with the public and Tribal governments regarding MRAPS. The MoRAST letter provided additional detailed comments regarding the report, including support for the concept of an Executive Council to enhance collaboration and offered assistance from MoRAST with the implementation of such a concept given the key role of its State and Tribal officials.

While MoRAST recognizes that the USACE is the lead federal agency for MRAPS, some of the issues that will likely arise during the study are under the jurisdiction of other federal agencies, particularly the Western Area Power Administration, and Fish and Wildlife Service. Since the Pick-Sloan Program involved both USACE and U.S. Bureau of Reclamation projects, Reclamation should be extensively involved in the study. As with the projects and authorities of the USACE, hydropower production, irrigation, rural water supply, fish and wildlife resources and other projects and programs of these three agencies are very different than the vision of 1944. The USACE should coordinate with these three federal agencies in particular so that the programs and responsibilities of these agencies can be incorporated in the study as appropriate.

There are other ongoing studies underway by a variety of state and federal agencies and universities that are gathering information and data related to the Missouri River. The MRAPS study managers should be aware of and utilize these data and information sources as appropriate to avoid duplication of effort and expenditures. However, MRAPS is a separate study with a very different purpose from each of the other studies underway in the basin. As a result, while these studies should be coordinated to avoid duplication of effort, each study should maintain its own focus.

MRAPS should follow the Scientific Integrity Principles laid out by the Presidential Memorandum on Scientific Integrity. The Office of Science and Technology should be fully engaged throughout the development of the study to ensure the highest levels of integrity and objectivity throughout the study development.

The National Research Council should be engaged to establish an independent diverse panel for the study that can use its experience and knowledge to objectively evaluate the study process and make recommendations for change in the authorized purposes of the 1944 FCA, if deemed appropriate. The recommendations of the NRC in its book entitled: *The Missouri River Ecosystem, Exploring the Prospects for Recovery*, should be reviewed, as well as other relevant information.

MRAPS should be a rigorous and comprehensive study that considers the full array of benefits and costs of the Missouri River Projects to the social, economic, biological, physical, and human environment of the Missouri River Basin. The study should observe appropriate principles, guidelines, and methods in conducting the various analyses required by this ambitious enterprise.

Thank you very much for your cooperation and the extensive effort already exhibited by the USACE related to the implementation of the study. Please let me know if you have questions or you may contact David Pope, Executive Director at the MoRAST office. Thank you for your consideration.

Sincerely,



J. Michael Hayden, Chair
Missouri River Association of States and Tribes
Topeka, Kansas
(785) 296-2281 or mike.hayden@outdoorks.com

cc: MoRAST Board of Directors
David L. Pope, Executive Director, david.pope@mo-rast.org
Brigadier General John R. McMahon, Commander, USACE Northwestern Division
Witt Anderson, Program Director, USACE Northwestern Division
Erik Blechinger, Deputy District Commander, USACE, Omaha District
Steve Iverson, Deputy District Commander, USACE, Kansas City District
Kayla Eckert Uptmor, Chief of Planning, USACE Omaha District
David Combs, Chief of Planning, USACE Kansas City District
Mark Harberg, MRAPS Project Manager, USACE Omaha District
Lamar McKissack, MRAPS Project Manager, USACE Kansas City District
Gary Campbell, Deputy Regional Director, USBR Great Plains Region
Mike Olson, Missouri River Coordinator, USFWS
Nick Stas, Environmental Manager, WAPA Upper Great Plains Region

Attachments:

1. MoRAST Questions and Issues document, dated July 28, 2010
2. MoRAST letter to the Honorable John Paul Woodley, Jr., dated April 27, 2009
3. MoRAST letter to Ms. Gail Brooks, dated May 7, 2010

Attachment 1
Missouri River Association of States and Tribes
Missouri River Authorized Purposes Study, 1944 Flood Control Act
Potential questions and issues to be studied

July 28, 2010

In the FY 2009 Omnibus Appropriations Act, Congress authorized and provided first year funding for a study of the Missouri River Projects to determine if changes to the authorized project purposes and existing federal water resource infrastructure may be warranted. Section 108, Division C of the Act reads as follows:

The Secretary is authorized to conduct a study of the Missouri River Projects located within the Missouri River basin at a total cost of \$25,000,000 with the express purpose to review the original project purposes based on the Flood Control Act of 1944, as amended, and other subsequent relevant legislation and judicial rulings to determine if changes to the authorized project purposes and existing Federal water resources infrastructure may be warranted: Provided, That this study shall be undertaken at full Federal expense.

This provision appears to be consistent with the action taken by the Missouri River Association of States and Tribes (MoRAST) at its February 25, 2008 meeting to request a study to determine whether changes are needed to the congressionally authorized purposes of the 1944 Flood Control Act (FCA) in order to best meet the contemporary needs of the Missouri River Basin. Ultimately, this study may allow a new comprehensive plan to be developed to meet those needs and deal with other issues in the Missouri River Basin.

On April 27, 2009, MoRAST sent a letter to the Assistant Secretary of the Army (CW) to offer suggestions for inclusion in the implementation guidance for the Sec. 108, Missouri River Study. That letter focused on process issues related to the management of the study, but indicated that MoRAST expects to provide future recommendations regarding the scope of the study and issues that we believe should be reviewed as a part of the study. The Section 108 Study is now known as the Missouri River Authorized Purposes Study (MRAPS).

Purpose: The purpose of this document is to outline a preliminary list of the issues and questions that should be addressed by the study in order to help determine the scope of the study and ultimately whether changes should be made to the 1944 FCA, as well as Federal water resources infrastructure in the basin.

Background: The Missouri River Basin includes parts or all of 10 states and 28 Tribal Nations. The mainstem of the river flows through seven states – Montana, North Dakota, South Dakota, Nebraska, Iowa, Kansas, Missouri, and the lands of many of the 28 Tribal Nations in the Missouri River Basin. The Missouri River runs 2300 miles from Three Forks Montana to its confluence with the Mississippi River near St. Louis, Missouri and the watershed covers approximately 50,000 square miles and one-sixth of the continental United States. It is an extremely diverse basin in many respects. Its geography varies from the mountains of Colorado, Montana and Wyoming with some peaks as high as 14,000 feet above sea

level to the low lands of Missouri of less than 500 feet. The climate varies from arid and semi-arid to sub-humid. There are sparsely populated rural areas, major cities, grasslands and rich agricultural areas, valuable natural and environmental resources and significant cultural diversity among the basin's people.

Serious flooding and major droughts are a fact of life in the Missouri River Basin, the water source being plains snowpack, mountain snowpack, rain events or a combination of the three. Early flood events occurred in 1908, 1909, 1915, 1935, 1942 and multiple events in 1943 and 1944, several of which resulted in loss of life and large economic damages. The drought of the 1930's caused major economic losses and social disruption. It contributed to the hardships of the Great Depression, although other significant droughts have also occurred. At the very time of these floods, Congressional debate occurred on the 1944 Flood Control Act legislation that would provide for installation of enormous dams on the Missouri River and other smaller dams on the tributaries. During the debates, the Congress recognized ongoing damage to various facilities as well as the loss of agricultural production caused by the flooding.

The Missouri River legislation started with the "Pick" plan proposed by the U.S. Army Corps of Engineers (USACE). H.R. Doc. No. 78-475 (1944). Named for its primary author, Col. Lewis Pick, the plan recommended five large mainstem dams on the river, 1500 miles of levees and many small reservoirs on the tributaries. The plan was to provide for the "most efficient" use of the river "for all purposes, including irrigation, navigation, power, domestic and sanitary purposes, wildlife, and recreation." On the other hand, the Bureau of Reclamation (USBR) presented a plan authored by William Sloan that proposed three dams and numerous tributary reservoirs. S. Doc. 78-191 (1944). The "Sloan" plan was also for "multiple purposes.", but emphasized irrigation for economic stability and hydroelectric power for economic growth. The Secretary of the Interior also stated that "[s]ubstantial and material benefits would accrue through recreational use of the waters and facilities proposed."

The USACE and USBR reconciled their differing plans in a Joint Report. In the 1944 FCA Congress adopted the two plans "as revised and coordinated by [the Joint Report]." The Report states that the basin's development is to secure benefits for "flood control, irrigation, navigation, power, domestic and sanitary purposes, wildlife, and recreation."

The 1944 Flood Control Act, PL 534, Seventy-eighth Congress, Second Session, 58 Stat. 887 (December 22, 1944), 33 U.S.C.A 701 et seq., declared that it was "...the policy of the Congress to recognize the interests and rights of the States in determining the development of the watersheds within their borders and likewise their interests and rights in water utilization and control, as herein authorized to preserve and protect to the fullest possible extent established and potential uses, for all purposes, of the waters of the Nation's rivers; to facilitate the consideration of projects on a basis of comprehensive and coordinated development; and to limit the authorization and construction of navigation works to those in which a substantial benefit to navigation will be realized therefrom and which can be operated consistently with appropriate and economic use of the waters of such river by other users."

The 1944 FCA, and prior authorizations, resulted in the construction of six major dams on the mainstem Missouri River operated as a system by the USACE and many more smaller dams and other projects on the tributaries operated by the USACE or the USBR. This development has provided substantial benefits from the operation of the mainstem reservoirs for flood control, navigation, irrigation, power, water

supply, water quality, recreation and fish and wildlife and from the operation of the tributary projects for their authorized purposes.

While this development provided water for the various authorized purposes, it also largely frustrated the development of Tribal lands, water resources, and economic sustainability. The cost and benefits of this development is further discussed later in this document, along with changes that have occurred since 1944. Also important to this background are the federal reserved water rights held by the Indian Nations in the basin. Since 1944, the Assiniboine and Sioux Tribes of the Ft. Peck Indian Reservation and the State of Montana have quantified a Tribal water right of one million acre feet of water on the mainstem, while Tribes on the Missouri River tributaries have secured at least two million acre feet of water either through litigation or negotiation, and at least 20 more Tribes in the basin have valid legal claims to federal reserved water rights which are in various stages of development. A study of the authorized purposes of the 1944 Flood Control Act, in broad scope, should be able to identify for the future how the anticipated water uses, including tribal uses, should be integrated with or added to the authorized purposes of the Act, and could avert years of litigation and uncertainty between federal agencies and States or Tribes or among various parties.

Adoption of the 2004 Master Water Control Manual by the USACE and Litigation regarding the operation of the reservoir system: The USACE operates the Missouri River Reservoir System in accordance with a Master Water Control Manual, which had not been modified since 1979 until 2004. Additional more limited changes to the Master Manual were made in 2006. After about 15 years of study, process and consideration, the 2004 Master Manual was issued by the USACE on March 19, 2004, along with the 2004 Annual Operating Plan and Record of Decision (ROD).

During the Revised Master Manual review, the USACE calculated the National Economic Development (NED) benefits for the various uses of the Mainstem Reservoir System and determined that the total NED benefits were \$1,782 million as of May of 2003. The largest value was for hydropower at \$668 million, followed by water supply at \$610 million (including irrigation and water quality). Flood control was valued at \$410 million, recreation (reservoirs) at \$60 million, recreation (river reaches) at \$25 million and navigation at \$9 million. Some have noted the challenge in determining these values and comparing one use to another, and much could be said about the value of each and how they relate to each other and to the needs of the basin.

In re: Operation of the Missouri River System, 363 F. Supp. 2d 1145 (D. Minn. 2004), Judge Magnuson issued his Memorandum and Order disposing of all issues in the consolidated cases. Judge Magnuson reviewed the cases cited above and reiterated that the FCA requires that the Corps must strike a balance among many interests, including flood control, navigation and recreation, but that the FCA “does not require a particular outcome but rather that the Corps consider all interests in its operations.” Judge Magnuson ruled that all river interests must be considered and evaluated to ‘secure the maximum benefits’ to river interests, that the Corps’ prioritization of river interests is discretionary, but that the Corps is not entitled to abandon these interests; it must consider and balance river interests to achieve maximum benefits.

In the second decision of the Eighth Circuit issued on appeal of Judge Magnuson's decision, the Eighth Circuit noted that arguments based on the wisdom of priorities established by the FCA must be addressed to Congress. It held that even though the USACE 2004 Master Manual provided for decreased navigation flows during time of drought, it was adequate considering that it did not abandon navigation, but the Court noted that it did not rule out the possibility that more limited support for flood control or navigation could be held to be abandonment of these dominant functions. The Court quoted with approval its earlier decision in *South Dakota v. Ubbelohde* and generally affirmed the judgment of the Magnuson decision. In re: *Operation of the Missouri River System Litigation*, 421 F. 3d 618 (8th Cir. 2005).

Summary of changes since 1944: There have been many changes in the physical, economic and environmental conditions since 1944. The Missouri River Mainstem Reservoir System is operated in accordance with the 1944 FCA for various authorized purposes including flood control, water supply, water quality, irrigation, hydropower, navigation, recreation and fish and wildlife. About 65 years have now passed since the 1944 FCA was enacted. While the construction and operation of the reservoir system and other works have resulted in large project benefits from some of the authorized purposes and much less for others, it has also created substantial negative costs and impacts on Indian Tribes and others, large environmental costs and losses, including wetlands and habitat for a number of native species, and costs and losses of cultural and historic sites and resources protected by the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and other related federal laws. As a result, two birds and one fish are now listed as threatened or endangered pursuant to the Endangered Species Act, and many other species have suffered major declines.

While flood control and hydropower have provided substantial benefits as expected, much of the irrigation planned in the upper basin was not developed and the amount of commercial navigation shipping has not met the expectations at the time the project was authorized. Recreation has grown far more than expected. Large benefits have occurred from municipal, rural and industrial water supply, which has become increasingly important as the population has grown and multi-year droughts have occurred. Extended drought and low reservoir levels under current system operations have caused serious impacts to various uses, including hydropower production, recreation, water supply and navigation support. Drinking water supplies have been directly negatively impacted for several communities, and expensive modifications required to lower water supply intakes in the reservoirs and on the river downstream are ongoing. Reductions in hydropower production resulted in increased power rates. Ecosystem restoration and mitigation has become essential to recover the endangered species, avoid actions that jeopardize the continued existence of the endangered Pallid Sturgeon, and allow other project purposes to continue to generate economic benefits. River degradation has threatened water supply intakes and other infrastructure at several locations. Increased sedimentation threatens the lives of the mainstem and tributary reservoirs in the basin. In contrast, a reduction in the river sediment in the lower river has apparently negatively impacted the ecosystem. Hundreds, if not thousands, of cultural and historic sites and resources have been damaged or completely destroyed.

Uncalculated or planned for was the economic devastation to the tribal communities displaced by the placement of the dams. The vast majority of lands flooded were Indian Reservation lands, resulting in the displacement of entire communities. With the failure to fund irrigation projects on and off reservations to replace the bottomlands utilized for agricultural production, the failure to fund replacement infrastructure

including but not limited to roads, water supply, schools, and hospitals inundated by reservoirs, and the failure to provide funds for development of recreation based economies, unemployment rates of over 80% prevail in many Tribal Nations whose lands have been inundated to this day. Calculations of the economic benefit of the Pick-Sloan Project do not account for these ongoing and unremedied costs and economic losses. There are many other ongoing costs to Tribal Nations that have not been adequately addressed that are a result of the construction or operation of the dams on the Missouri River.

The need for compliance with the National Historic Preservation Act and related laws to ensure that the historic and cultural sites impacted by Missouri River operations are not damaged and destroyed is now well documented. The tribes and the USACE have identified thousands of sites that were not considered in 1944.

The Water Resources Development Act passed by Congress in 2007 (WRDA 2007) may have some impact on MRAPS. Section 2031(a) of WRDA 2007 includes the following “National Water Resources Planning Policy” and a requirement that the “Principles and Guidelines” adopted in 1983 be revised consistent with the considerations included in Sec. 2031(b) and used for all water resources projects unless a feasibility study has commenced before the date of the new revisions. However, the new Principles and Guidelines can be applied to a water resources project already commenced under certain circumstances. As of June 2010, the revisions to the Principles and Guidelines have not been finalized, and the applicability to MRAPS is uncertain.

SEC. 2031. WATER RESOURCES PRINCIPLES AND GUIDELINES.

- (a) NATIONAL WATER RESOURCES PLANNING POLICY.—It is the policy of the United States that all water resources projects should reflect national priorities, encourage economic development, and protect the environment by—
1. seeking to maximize sustainable economic development;
 2. seeking to avoid the unwise use of floodplains and flood-prone areas and minimizing adverse impacts and vulnerabilities in any case in which a floodplain or flood-prone area must be used; and
 3. protecting and restoring the functions of natural systems and mitigating any unavoidable damage to natural systems.

We look forward to participating in a rigorous and comprehensive study that considers the full array of benefits and costs of the Missouri River Projects to the biological, physical, and human environment of the Missouri River Basin and expect the study to be closely coordinated with States, Tribes and other federal agencies. We expect that the study will observe appropriate principles, guidelines, and methods in conducting the various analyses required by this ambitious enterprise.

Analysis of Questions and a Range of Scenarios or Packages: The list of potential questions presented below provides guidance on some of the specific questions members of MoRAST believe need to be examined. However, that examination should not be done in isolation and should address trade-offs involved in addressing the concerns. This may involve analyzing a range of packages or scenarios for the river that include both operational and other elements. Analysis of questions and scenarios should include examination of economic cost-benefit, ecosystem goods and services, and social and cultural effects.

Comments, potential issues and questions to be addressed by the study:

A. Geographic Scope of Study:

1. The entire Missouri River Basin should be studied, including the tributaries.
2. Navigation support from the Missouri River Reservoir System is not authorized to support navigation on the Mississippi River, but more water is currently provided to the Mississippi River in the fall months compared to historic flows through hydrological flow inversions. However, the impact to Mississippi River navigation and other uses as a result of the operation of the Missouri River Mainstem Reservoirs for certain defined scenarios should be evaluated, as well as consideration of questions defined in more detail in Section E related to Navigation flow support.

B. Analysis of economic and other costs and benefits:

1. How would system operations look if benefits were maximized for each authorized purpose?
2. Will the role of irrigated agriculture with respect to the ultimate development plan be assessed?
3. Will the pricing and marketing of system hydropower be explored?
4. Will benefits and costs be estimated consistent with the National Economic Development (NED) framework and the other three accounts described in the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies?
5. How will the NED framework be tailored to and reflect the varied economies of the states in the basin?
6. How does the NED framework capture the economic benefits of and costs of the FCA to Tribal economies?
7. What methods will be used to estimate benefits for recreation?
8. What methods will be used to estimate benefits for navigation?
9. Will the study address water marketing?
10. How can economic losses to Tribal Nations and damage to tribal economies from River Operations be accounted for in the Corps' cost-benefit analysis?
11. How will the Study address environmental costs and losses, and the social and cultural costs and losses?
12. How can subsequent damage not considered in the original Flood Control Act, or underestimated in the original Flood Control Act, be accounted for as a cost in the Corps' cost-benefit analysis?
13. Will costs and benefits be estimated based on the 1983 Principles and Guidelines or the "new" Principles and Guidelines being developed?

C. Flood Control and Floodplain Management:

1. How can flood damage reduction be improved?
2. How has the development of the Bank Stabilization Navigation Project impacted floodplain development and management?
3. Can certain portions of the Missouri River Floodplain be utilized to serve both as a long-term flood water storage/conveyance area and at the same time these sections of the floodplain serve to benefit ecosystem restoration efforts? If so, how could this be implemented?
4. As reservoir storage is decreased over the long-term by sediment, how can flood water be better managed on the floodplain to both reduce damages and benefit restoration efforts?
5. Can we reduce flood damage downstream of the dams, especially below Gavins Point Dam, by providing a wider flow corridor for river sustainability and future flood damage reduction?
6. How can we make flood damage reduction work with ecosystem restoration?
7. If the river is given more of a floodplain, can it help reduce the stage of future floods?
8. What was the cost of the 1993 flood on the Missouri River to taxpayers?
9. Can the study include an analysis of the natural hydrologic regime and the relationship of current or potential flood damage reduction options to the health of the ecological system?
10. Is it feasible to develop a coordinated non-structural flood damage reduction system to supplement or modify the existing structural flood damage reduction system?
11. What is the value of flood damage reduction for the various river reaches and for the various components of flood plain development, such as agriculture and rural areas, towns and urban areas, public resources, etc, compared to the impact of flood control operations on other system purposes? How would these values change if the use of some portion of the floodplain is modified through ecosystem restoration?
12. Can the study include an analysis of a coordinated flood damage reduction and floodplain development plan?
13. What incentives could be provided to discourage development in high risk, flood prone areas?

D. Domestic, Municipal, Rural and Industrial Water Supply (MR&I):

1. What are the domestic and MR&I water supply needs (quality and quantity) on Indian Reservations? How can water supply needs be met on Indian Reservations and throughout the basin?
2. How to best minimize water shortages and intake problems (reservoirs and river reaches) during drought?
3. How to meet water supply needs in the face of major river degradation, such as in Kansas City?
4. What will be the water quality impact to water supply systems as restoration efforts continue? If the river carries more sediment to become healthy, what adaptation will be required?

5. Are water supply systems designed to deal with more naturalized flows? If not, how will they need to be altered?
6. Water supply demands are increasing nationally. What role, if any, will the Missouri River have in meeting these demands?
7. How can operational, economic and public health impacts to water supply intakes for Tribes and major public water suppliers, and other users, due to low lake and river elevations, be resolved or improved?
8. How can operational impacts from sedimentation on intakes, as well as impacts to various other uses, such as power plants, industrial and irrigation uses and hydropower be resolved? Tribal and other communities removed from the River as a result of dam construction continue to have ongoing water access problems.
9. Will the impacts of potential charges for the use of water supply storage from the Missouri River Mainstem Reservoir System by the USACE be considered by MRAPS? If so, what analysis and assumptions will be used regarding the distinction between the uses of the natural flow of the river as it passes through the reservoir system or is used below one of the reservoirs compared to water actually withdrawn from or benefiting from the use of storage?
10. What water quality standards will be used during the study? Will the inconsistency in water quality standards and Sec. 401 certifications among the various States and Tribes be considered? How does the water quality purpose for the Missouri River projects impact turbidity needed for the pallid sturgeon and current water treatment infrastructure?

E. Navigation:

1. What is the cost benefit analysis to maintain navigation from several perspectives: a) cost to maintain the navigation channel structurally, b) cost in water usage for navigation versus water unavailable for other uses such as recreation, lost head for hydropower generation, etc, c) cost to restore the ecosystem with and without navigation, and d) the environmental and hydrological cost and benefits of navigation?
2. What are the costs and benefits of navigation for each reach of the Missouri River? Should existing navigation targets be maintained? Should new targets be added at different locations? How does the value and tonnage compare to other river systems in the Inland Waterways System in the United States?
3. What are the tonnage and value trends over multiple years? How many tows operate on the Missouri River and how many trips have been made up and down the river by reach each navigation season over time? Sand and gravel should be analyzed separately from other commercial products.
4. What alternative avenues are available to haul commerce along the Missouri River? How do they compare and what are the impacts among alternatives?
5. Review other studies and recommendations regarding Missouri River navigation.
6. Within the rivers making up the Inland Waterways system, how many have lock and dams and how many have no locks and dams like the Missouri?
7. Is there technology for navigation which would allow operations at a shallower draft? Has it been used in other areas, if it is available?

8. How should tributary reservoirs that can be or are currently operated in conjunction with the mainstem be operated in the future? Specifically, what are the costs and benefits of providing Missouri River navigation support from the Kansas River Basin tributary reservoirs?
9. What effect does mining the river bed for sand and gravel production have on the navigation channel?
10. With regard to the potential operation of Missouri River Basin Reservoirs for support of Mississippi River navigation, consideration should be given to these questions: a) is it feasible to provide emergency flow support during major drought/low flow conditions on the Mississippi River and what are the impacts given the distance and travel time from the reservoirs b) what would the economic impact and potential tradeoffs be for Missouri River navigation c) what would the impact be on other uses in the Missouri River Basin, including additional flood risks on the Mississippi River and d) are there other more feasible alternatives to provide navigation flow support for the Mississippi River during drought, such as the use of tributary reservoirs located in the State of Missouri that are closer to the point of need?

F. Recreation:

1. What are the current recreation uses, the demands for water based recreation and the demand for better functioning recreation of a restored Missouri River in different sections of the basin? How can the demands be better served?
2. If the ecosystem is restored, how much increase in recreation can be expected in the future?
3. What are the different outdoor recreational activities are currently being utilized throughout the system, such as the Yankton Riverboat Days held August 21-23, 2009? Consider use of the Missouri Department of Conservation total users survey that should be completed by the end of 2010. Can any of these activities be increased when the ecosystem is restored?
4. How can impacts to reservoir fisheries and recreation uses, including reduced boat ramp access, and lack of replacement infrastructure in tribal communities to ensure river access as a result of dam construction be resolved?
5. How are communities along the Missouri River attracting people and benefiting their economies? Consider evaluation of impact of festivals, marinas, expos, canoe races or floating, etc.
6. How will the sustainability of recreation businesses along the Missouri River and its reservoirs be evaluated under current and revised authorized purposes?
7. How can new and enhanced recreational facilities be built and supported to address current and future demand?

G. Hydropower:

1. What is the economic impact of drought on hydropower generation?

2. What is the decrease in generating capacity as reservoir levels are drawn down and what is the economic cost?
3. What is the economic and environmental benefit or impact if the operation of the reservoirs maximizes hydropower generation?
4. Can hydrokinetic turbines replace dams to generate power some day?
5. How can the detrimental effects of hydropeaking be ameliorated so downstream fluctuations can be diminished, especially below Fort Randall Dam?
6. Can low level hydropower releases be modified to bring river temperatures up to normal historical river temperatures?
7. Are there new ways to supplement hydropower during droughts when very little water is being released from the dams, besides purchasing power from other producers?
8. How will additional development of other sources of energy affect hydropower production and other uses of the reservoir system?
9. How can lack of hydropower compensation to affected communities originally envisioned in the 1944 FCA cost-benefit analysis be considered?
10. How will power benefits fluctuate with various short term operational scenarios that provide benefits to other uses?
11. What is the impact of Mainstem Reservoir operations on the range of hydropower customers with various power allocations?
12. What would be the impact of changing the power peaking operations at Ft. Randall Reservoir to better protect aquatic life in the reach below the project?
13. What is the current distribution of hydropower benefits and should it be redistributed?
14. What is the potential for additional hydropower development at tributary projects?
15. Can new technology in generator design be used to produce more power with less water?

H. Power Plants and cooling water:

1. What are the future water demands from the Missouri River for power plants and cooling?
2. Thermal discharge criteria should be assessed to determine the relationship of flow and heat discharge so that NPDES Permits can be modified if appropriate.
3. What flows are needed for cooling with and without potential changes to thermal discharge criteria?
4. What is the feasibility of using cooling towers instead of the river for cooling?

I. Irrigation:

1. What opportunities are there for future irrigation development on and off Indian reservations and what role would the federal government play? What type of irrigation systems would be best to use?
2. How does current irrigation development, both private and Reclamation projects, compare to the irrigation development planned in the Pick-Sloan Program? How much

additional land is now considered suitable and economically feasible for irrigation using current technical standards?

3. What are the current and future potential impacts of irrigation development on depletions to the water supply?
4. How can losses to agricultural production from lack of irrigation project funding originally envisioned in the 1944 FCA cost-benefit analysis be considered?
5. What are the current and future costs to maintain functional irrigation pumps due to changes in the channel below Ft. Peck Reservoir or at other locations experiencing similar problems?

J. Fish and Wildlife:

1. What is the best way to create sandbar complexes in the channelized reach of the Missouri River?
2. What threatened or endangered species are on State lists, Federal lists, or both?
3. What are the 51 fish species the National Research Council reported as being rare, uncommon, and/or decreasing across all or a part of their ranges? What is the status of these species?
4. What physical, biological, and economic values could be obtained if an erodible corridor concept was adopted?
5. How can fish and wildlife resources contribute more to the economic viability of the basin?
6. Should we protect cold water species in a warm water river?

K. Cultural and Historic Properties and Cultural Resources:

1. How can the historic and cultural sites impacted by Missouri River Operations be best protected from damage or destruction to ensure compliance with the National Historic Preservation Act and related laws?
2. How can damage and/or destruction to irreplaceable historical and cultural sites be avoided?
3. How can environmental, historic and cultural site mitigation, recovery and restoration as a result of the passage of the 1944 FCA, including consideration of vital wildlife habitat, medicinal resources, and River ecosystems vital to native species be implemented to ensure compliance with federal laws?

L. Social, economic and other impacts from construction and implementation of the mainstem reservoir system:

1. How can the social, cultural, environmental, and true economic costs resulting from dam construction be calculated?
2. What are the social, cultural and economic impacts to States and Tribes as a result of projects that were included in the Pick-Sloan Program, but not completed, as well as

water uses or projects that did not develop? What analysis of similar impacts will occur for future water needs, especially on Indian Reservations?

3. How can the social, economic and cultural impacts of various alternatives for potential changes to the authorized purposes best be considered?

M. Ecosystem Restoration:

1. How would a change in authorized purposes impact recovery and mitigation projects? Can funds for these projects be reduced if there are changes in authorized purposes?
2. What will be the impact on ecosystem goods and services when the ecosystem is restored?
3. What additional alternatives would be available for ecosystem restoration if navigation was either totally de-authorized or limited to selected reaches? What would be the economic impact without these constraints?
4. Approximately how many acres of wetlands could be created in the channel of the river/connected floodplain if navigation were de-authorized?
5. If a significant amount of additional wetlands were restored on the floodplain, what impact would occur on water quality? Would this result in the absorption of significant nitrogen and phosphorus before it arrives in the Gulf of Mexico?
6. It is recognized that an extensive Missouri River Recovery Program is being implemented, but it may not be able to consider all options under the current laws and programs.
7. How will the Missouri River Ecosystem Restoration Plan be coordinated with MRAPS? Will it be parallel, but not overlap?

N. Sedimentation, Aggradation, Degradation and Bank Stabilization:

1. What impact is sedimentation having on hydropower generation and what is the economic cost?
2. Water management has long been considered critical in the Missouri River Basin. However, sediment management may rival water management in the future. How can Missouri River sediment be managed in a more sustainable fashion?
3. Is it feasible to construct/install low level sluice gates in dams on the Missouri River, especially at Gavins Point Dam?
4. How crucial is providing sediment to help recover Gulf of Mexico coastal bays and wetland areas, as well as the Mississippi River delta?
5. What are the impacts of changes in sediment load in the Missouri River on coastal wetland restoration in the Gulf of Mexico?
6. How can solutions be developed for erosion and sedimentation impacts, including the repeated exposure of contaminants buried in sediment, such as mining tailings which present risks and dangers to public health?
7. How can the study best examine options for providing limited bank stabilization to protect private property from bank erosion in the 59 mile reach of the Missouri National

- Recreation River? Can it reconcile the needs of those pursuing remedies for erosion with permitting requirements of the National Park Service and USFWS in that reach?
8. How will the Missouri River Degradation Study and any projects be integrated with this study?
 9. What impact has bed degradation had on the alluvial aquifer?
 10. Will there be a general geomorphic assessment to determine the impacts of existing and alternative authorized purposes considered during the study?
 11. What are the impacts of degradation and aggradation in the 80 mile river reach that includes Bismarck and Mandan, North Dakota on the floodplain, insurance needs, land values, conveyance capacity, intakes and various economic uses such as irrigation, water supply and hydropower? If there are other river reaches with similar circumstances, those impacts should also be determined.
 12. What is the impact of degradation on Oxbows and drainage and on infrastructure, such as roads, bridges, levees, pipelines and intakes? What are the options to reduce the impact of degradation in the Sioux City, Iowa to Desoto Bend?
 13. What is the best way to implement sediment management?
 14. What is the effect of sediment management/removal on the aquatic resource?

O. Future Development:

1. What is the level of water development that has occurred to date compared to what was envisioned in the Pick-Sloan Plan?
2. What are the current depletions to the Missouri River both upstream and downstream of Gavins Point Dam for each State and Tribe in the Basin?
3. What potential opportunities, needs and impacts would occur to address the development that did not occur? What changes in the nature of future development should be considered?
4. What are the current and future domestic and public water supply needs in the basin? What are the water needs for energy, irrigation and other uses?
5. What role should the U. S. Bureau of Reclamation play in the study and future water development?
6. What are the impacts from the development of renewable energy, carbon sequestration and other energy developments such as the Bakken Shale and Coal Bed Methane? Will any analysis of water for energy consider the results of National and State Energy Planning?
7. With regard to the floodplain:
 - a. What is the best way to implement the recommendations of the Galloway Report?
 - b. What are the current floodplain widths compared to the minimum of 5000 feet below Kansas City and a minimum of 3000 feet above Kansas City stated in the 1944 FCA? Why were federal levees constructed at the current locations compared the minimum distances specified in the 1944 FCA?
 - c. What is or can be done to engage county zoning authorities so that there is not undo floodplain development in order to minimize the costs and other consequences of future flood events

P. Tribal water rights and Treaty issues:

1. The Federal Reserved Water Rights held by the American Indian Tribes in the Missouri River Basin are an important issue for the Tribes, States and Federal Government. Some of these rights have been quantified and some have not. Potentially significant quantities of water are involved.
2. MoRAST does not currently have a position on whether the potential impact of Federal Reserved Water Rights should or should not be considered in the study. However, the views of the individual Tribes regarding whether or not their particular rights should be included must be identified, respected, and carefully considered.
3. The USACE does not have the authority or responsibility to quantify Federal Reserved Rights. However, what methods and assumptions will be used, if any, to consider the impact of study alternatives on future water use conditions related to the Tribes that may impact the operation of the Missouri River Reservoir System?
4. What information, analysis and process will be used to help better understand the impact of the Pick-Sloan program on Tribal Treaty rights and Tribes, as well as how this relates to the unmet needs of the Tribes in the Basin and the federal governments trust responsibilities to the Tribes?

Q. Impact of climate change on the basin's water supply:

1. What modeling and timeframe will be used to determine the impacts of climate change on the inflows into the Missouri River and the reservoir operations in the basin?
2. Are current hydrologic models of Missouri River Basin streamflows robust enough to capture the varying climatic zones represented by the geographic area of the basin?
3. What would the impacts of an earlier snowmelt have on the operation of the reservoirs?
4. Do the impacts of climate change affect the ability to provide flood control?
5. How will climate change effect water supply in the Missouri River basin, e.g. in terms of quantity and timing of runoff and the occurrence of extremes?
6. How will climate change impact irrigation needs/water availability?
7. What measures need to be taken to meet water supply needs in light of the potential impacts from climate change?

Conclusion: As evidenced by these 130+ issues and questions, there is a lot to be potentially examined by the Missouri River Authorized Purposes Study. The study provides a unique opportunity to evaluate the existing purposes and results of the Pick-Sloan development plan authorized by the 1944 Flood Control Act. At this crossroads 66 years later we have the ability to re-visit the portions of the plan that have been successful and build upon those successes. It is also the time to re-examine the parts of the plan that didn't develop as planned in 1944 and determine what the social, economic and environmental needs are in 2010 and beyond. The study should be able to provide objective information from which recommendations can be made to Congress regarding a revised plan to meet those future needs.

Attachment 2
Original Text of Letter
Missouri River Association of States and Tribes
(Letterhead)

April 27, 2009

The Honorable John Paul Woodley, Jr.
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Room 3E446
Washington, DC 20310-0180

RE: Missouri River, Implementation of Section 108 Study of 1944 Flood Control Act purposes

Dear Secretary Woodley,

The Missouri River Association of States and Tribes (MoRAST) brings together representatives of the Governors of the States of Wyoming, Montana, North Dakota, South Dakota, Nebraska, Iowa and Kansas and leaders of the American Indian Tribes in the Missouri River Basin.

MoRAST has worked to realize passage of Sec. 108, of the Energy and Water Development Section of the FY09 Omnibus Appropriations Act. The study of the Missouri River and the authorized project purposes is appropriate given the changed physical, economic and environmental conditions since the projects were first envisioned and ultimately authorized by the Flood Control Act of 1944. Given the importance and the role MoRAST members have in the Missouri River basin we offer the following suggestions for inclusion in the implementation guidance for the Sec. 108, Missouri River Study.

1. Missouri River Basin American Indian Tribes, States and Federal Agencies all have overlapping and at times unique jurisdiction and expertise related to the Missouri River. Therefore, it is critical they be invited to be involved as Cooperating Agencies throughout the development and review of the Sec. 108 Missouri River Study. The process used should allow the Tribes and States to be fully involved throughout the study.
2. Develop a baseline of the current plan by evaluating social, economic, cultural and environmental cost and benefits of all current authorized purposes. Include a distribution of social, economic, cultural and environmental cost and benefits to different communities in the basin and throughout the basin as a whole.

3. Develop a desired future condition for the Missouri River by utilizing input from the public and input and development with Cooperating Agencies. This should answer questions like: Where do we want to be in the future? What do we want the environmental/ecological condition and the social and economic benefits of the system to be in the future?
4. Describe alternative suite(s) of authorized purposes and a management framework to balance uses and achieve the desired future condition. The alternatives should include a mix of beneficial uses (current purposes and a range of options that included various combinations of current and new purposes) The management framework should restore the ecological function as much as possible while balancing improved economic and social benefits from the system.
5. Study the environmental, social, economic and cultural impacts/benefits of the alternative suite(s) of authorized purposes and framework and describe the distribution of these impacts and benefits to different communities in the basin and throughout the basin as a whole. Estimation of the economic costs and benefits should use the current federal framework and guidelines for such studies.
6. Involvement of American Indian Tribes as Cooperating Agencies does not fulfill trust responsibilities of the Federal Government. The Corps would still be required to consult with the Tribes beyond this process.
7. There are ongoing studies underway by a variety of state and federal agencies and universities that are gathering information and data related to the Missouri River. The study managers should be aware of and utilize these data and information sources to avoid duplication of efforts and expenditures. Similarly, there are various coordination efforts that are ongoing in the basin that could be used to provide updates and receive input, so long as such a function is consistent with the entities role and does not distract from achievement of its purpose. These efforts as well as other public venues should be a part of efforts to inform and seek input from interest groups and the public. We assume the NEPA process, as well as the standard Corps study process, using the full expertise of the Corps will be used for the study, including its planning staff in the Omaha and Kansas City Districts, as appropriate.
8. The Sec. 108 Missouri River study should follow the Scientific Integrity Principles laid out by the Presidential Memorandum on Scientific Integrity. The Office of Science and Technology should be fully engaged throughout the development of the study to ensure the highest levels of integrity and objectivity throughout the study development.
9. The National Research Council should be engaged to establish an independent diverse panel for the study that can use its experience and knowledge to objectively evaluate the study process and make recommendations for change in the authorized

purposes of the Flood Control Act of 1944, if deemed appropriate. The recommendations of the NRC in its book entitled: *The Missouri River Ecosystem, Exploring the Prospects for Recovery*, should be reviewed, as well as other relevant information.

While MoRAST recognizes that the Corps of Engineers is the lead federal agency in this Sec. 108 Study, there are other Missouri River basin issues that will likely arise during the study that are under the jurisdiction of other federal agencies, particularly the Western Area Power Administration, the Bureau of Reclamation and Fish and Wildlife Service. As with the authorities of the Corps of Engineers, the current state of the Missouri River basin as it relates to hydropower production, irrigation, rural water supply, fish and wildlife resources and other projects and programs of these three agencies is very different than the vision of 1944. The States and Tribes request that they be kept informed of how the Corps plans to incorporate the programs and responsibilities of these three sister federal agencies in the Sec. 108 study.

This letter has focused on process issues related to the management of the 108 study. We expect to provide future recommendations regarding the scope of the study and issues that we believe should be reviewed as a part of the study.

We have appreciated your cooperation and interest in Missouri River issues in the past and wish you the best for the future. Please let me know if you have questions or contact David Pope, Executive Director at the MoRAST office. Thank you for your consideration.

Sincerely,



Mary Sexton, Chairperson
Missouri River Association of States and Tribes
Helena, Montana
msexton@mt.gov

cc: Mr. Terrence C. "Rock" Salt, Principal Deputy Assistant Secretary of Army (CW)
LT General Robert L. Van Antwerp, Commanding General and Chief of Engineers
Steven L. Stockton, Director of Civil Works
General William E. Rapp, Northwest Division Commander
Colonel David C. Press, District Commander, Omaha District
Colonel Roger A. Wilson, District Commander, Kansas City District
Mr. Witt Anderson, Northwest Division, Portland, OR
Mr. Larry Cieslik, Northwest Division, Water Management, Omaha, NE
Kayla Eckert Uptmor, Chief of Planning, Omaha District
David Combs, Chief of Planning, Kansas City District
MoRAST Board of Directors
David L. Pope, Executive Director

Attachment 3
Original Text of Letter
Missouri River Association of States and Tribes
(Letterhead)

May 7, 2010

Ms. Gail Brooks,
U.S. Institute for Environmental Conflict Resolution
Transmitted by e-mail to: brooks@ecr.gov

RE: Comments on the Missouri River Authorized Purposes Study, Situation Assessment Report, April 2010, prepared by the Osprey Group for the USIECR

Dear Ms. Brooks:

This letter provides comments on behalf of the Missouri River Association of States and Tribes (MoRAST) regarding the Missouri River Authorized Purposes Study (MRAPS) Situation Assessment Report prepared by the Osprey Group, dated April, 2010, for the U.S. Institute for Environmental Conflict Resolution (USIECR) and the U.S. Army Corps of Engineers (USACE). In particular, these comments will relate to the proposed "Executive Council" that is recommended as a way to provide a collaboration mechanism for the Missouri River Authorized Purposes Study (MRAPS).

The USACE is implementing MRAPS pursuant to direction by Congress to review the purposes of the Missouri River Projects under the 1944 Flood Control Act in order to determine whether changes to the purposes and existing federal infrastructure may be needed. Given the importance of the Missouri River Projects to the people of the Missouri River Basin, and the extensive nature of the projects and programs involved, MoRAST believes a comprehensive and objective analysis is needed. The development of an effective communications approach for the public and the States, Tribes and other federal agencies is an important element of the study process.

By way of background, it is noted that MoRAST is an association of representatives of the Governors of the States of Wyoming, Montana, North Dakota, South Dakota, Nebraska, Iowa and Kansas and many of the American Indian Tribes in the Missouri River Basin. MoRAST is interested in the proper management and protection of natural resources, including water resources, fish and wildlife and other related issues of interest to the States and Tribes in the basin. The operation of water related projects and programs by the federal agencies in the basin is very important to our members, especially due to the legal responsibilities of the States and Tribes related to water and the fish and wildlife resources, and the trust responsibilities of the federal government to the Tribes. For these reasons, MoRAST interacts extensively with representatives of federal agencies with related responsibilities in the basin. Several federal agencies routinely provide updates on programs and activities of interest at MoRAST meetings and many are involved in discussions through an agency liaison type relationship.

The Situation Assessment Report notes the importance of collaboration, communication and coordination and the need to inform and involve the public and various stakeholder interests during the implementation of MRAPS. It recommends a combination of activities that will simultaneously inform, involve and enhance collaboration with the public and Tribal governments throughout the Missouri River Basin. It proposes a “dialogue” group called an “Executive Council” to provide a mechanism for collaboration assuming a series of operating assumptions. As we understand this proposal, the USACE would convene the group that would include one senior government employee appointed by the Governor of each State and the senior leadership of the USACE. While it would not be a decision-making body, it would allow information and perspectives to be shared and the Council to provide guidance to the USACE. The model assumes a parallel or integrated Tribal Executive Committee, but the Osprey Group will further address this aspect of the report in an addendum after additional discussions with the Tribes.

At its March 16, 2010 meeting, MoRAST reviewed the Osprey preliminary proposal and took action to support the framework for the creation of what at that time was called a “Senior Steering Council”, but the concept is very similar to the recommendation contained in the Situation Assessment Report. However, there is still significant detail that will need to be worked out. MoRAST is willing to work with the USIECR and the USACE to refine the proposal if it is to be utilized. During the discussion of the matter, some concerns were expressed about the creation of a new group when it is so similar to what now exists through MoRAST. Some ideas were discussed, as further outlined below, about how to best use the existing capability that is available and perhaps offer a way to include others as needed.

The Governor is elected by the people of his or her state and serves as the chief executive officer. As a result, it is appropriate for each Governor to appoint a government official to represent the Governor and the people of that state on such a Council. While the details would need to be worked out, we expect that most, if not all, the States would be open to the concept of creating a process in each state to provide information and involvement by appropriate state agencies and stakeholders. Some States already have such groups in one form or another. Likewise, we support inclusion of Tribes on the Executive Council or inclusion in an overall Council, if a separate Tribal Executive Council is established. In short, some mechanism is needed for the States, Tribes and other federal agencies to meet jointly at times with the USACE leadership about MRAPS. We have previously supported the use of a “Cooperating Agency” approach for MRAPS and believe that is also important to the study process to involve State, Tribal and Federal agencies that have specialized expertise that could assist with the study.

There is some concern about creating another organization in the basin when many of the key players are already fully occupied with existing duties and participation in other organizations related to the Missouri River. MoRAST already includes Governor appointed agency heads or senior level officials from seven of the eight states in the basin that actively participate in Missouri River issues. While the State of Missouri does not belong to MoRAST, it is welcome to join. MoRAST also allows full participation and equal representation to the States by the basin’s Tribes. MoRAST is very interested in MRAPS and already includes many of the same officials that would most likely be appointed to such a new Council. The State of Missouri

participated in the organization of MoRAST a few years ago and is eligible to be a member, but has thus far not joined. Action was taken at the March 16, 2010 meeting to extend another invitation for Missouri to join MoRAST. It is currently unknown whether the State of Colorado is interested in participating in such an Executive Council. It has not participated in MoRAST or its predecessor organizations for many years, apparently due to its location and the nature of its legal framework related to the water resources involved.

While the Situation Assessment did not recommend the use of any existing organization in lieu of the proposed Executive Council, MoRAST would be willing to consider serving as a forum for many of the functions apparently being outlined for the proposed Executive Council if such a Council is not separately created, since it includes most of the same people from seven States and includes Tribal membership, along with federal agency involvement. Any States and Tribes not currently involved would be welcome to participate in any such events whether they joined MoRAST or not. If a separate Executive Council is organized, we would recommend that its meetings be coordinated with MoRAST when possible so the time, location and other logistical aspects would not result in extensive additional time and costs to many of the agencies and people involved.

In summary, we believe there is merit in the collaborative approach and concept of an Executive Council as outlined above. Since we recognize that the public and many stakeholders will want to directly participate in the study in some fashion, the States are also willing to help facilitate their involvement to the extent possible. We also suggest the USIECR and USACE consider other related options that would minimize the additional time and cost of creating a new organization. MoRAST is willing to help facilitate options that could help get all the States, Tribes and federal agencies involved in a fair and efficient way.

Please let David Pope, MoRAST Executive Director, or me know if you have questions. Thank you.

Sincerely,

A handwritten signature in black ink that reads "J. Michael Hayden". The signature is written in a cursive style with a long, sweeping underline.

J. Michael Hayden, Chair
Missouri River Association of States and Tribes
Topeka, Kansas
(785) 296-2281 or mike.hayden@outdoors.com

cc: MoRAST Board of Directors
David L. Pope, Executive Director, david.pope@mo-rast.org
Brigadier General John R. McMahon, Commander, USACE Northwestern Division
Witt Anderson, Program Director, USACE Northwestern Division
COL Robert J. Ruch, Commander, USACE Omaha District
COL Roger A. Wilson, Commander, USACE Kansas City District