

Minutes

Missouri River Association of States and Tribes (MoRAST)
Nebraska City, Nebraska
February 25, 2008

Chairman John Cooper called the meeting to order shortly after 9 AM, February 25, 2008 and welcomed everyone to the meeting, which was held at the Lied Lodge and Conference Center in Nebraska City, Nebraska. Introductions were made for all in attendance:

MoRAST Directors, alternates and other representatives present:

MONTANA: Mary Sexton and Jeff Hagener

WYOMING: Sue Lowry and Jodee Pring

NORTH DAKOTA: Todd Sando and Dave Fryda

SOUTH DAKOTA: John Cooper, Garland Erbele, Mark Rath, and Geno Adams

NEBRASKA: Kirk Nelson, Ann Bleed and Gene Zuerlein

IOWA: Mike McGhee

KANSAS: Mike Hayden, David Barfield and Steve Adams

STAFF: David Pope, MoRAST Executive Director

FEDERAL AGENCIES: USFWS, Mike Olson, Bismarck, ND, Wayne Nelson-Stastny, Yankton, SD and Kim Greenwood, Denver, CO; WAPA, Greg Liebelt, Ft. Peck, MT; USACE, Larry Cieslik and Rose Hargrave, Northwest Division, Omaha, NE, Randy Sellers, Mike George, Teresa Reinig, Eileen Padberg, Gwyn Jarrett and Joel Ames, Omaha District, Omaha, NE, Jennifer Switzer and Curtis Hoagland, Kansas City District, Kansas City, MO and Ed Theriot, HQ, Washington DC; USGS, Mark Anderson, Rapid City, SD and Darin Larson, Huron, SD; NWS, Kevin Low, Pleasant Hill, MO; USBR, Gary Davis, Billings; USIECR, Mike Eng, Tucson, AZ.

OTHERS: Paul Lepisto, Izaak Walton League, Pierre, SD; Randy Asbury, Coalition to Protect the Missouri River, Higbee, MO; Robert Davis, Natural Resources Consultant, Boulder, CO; Jason Skold, TNC, Omaha, NE; Bill Bryan, MO AG's Office, Jefferson, City, MO; Steve Light, Adaptive Strategies, St. Paul, MN; Don Jorgensen, MO River Technical Team, Jefferson, SD; Bill Beacom, Navigation Caucus, Sioux City, IA; Tony Willardson, WSWC, Salt Lake City, UT;

Business Meeting: Chairman Cooper reviewed the draft agenda for the meeting. There were no suggested changes.

Minutes: Mr. Pope noted that on page 7, Steve Guertin was listed as Regional Director in Denver of the U.S. Fish and Wildlife Service. However, at the time he was Acting Director and David suggested the minutes be corrected to show that change. Sue Lowry moved approval of the December 11-12 minutes, as corrected. The motion was seconded by Garland Erbele and passed without objection.

Treasurer's Report: The report was presented by Kirk Nelson, MoRAST Treasurer, showing expenditures since the December report and the balances in each account, which totaled \$247,948.13. A motion was made by Ann Bleed to approve the report. It was seconded by Mary Sexton and passed without objection.

Executive Director's Report: Mr. Pope provided a summary of recent MoRAST activities. He noted that in addition to routine offices activities, he spent time following up on actions from the last meeting. Among other things, this included helping prepare a letter to Assistant Secretary Woodley related to WRDA Implementation Guidelines. After receiving input on the content, the letter was circulated for comments, finalized and sent, and David followed up with the people involved. He indicated that he continues to update the website as time permits. All the Power Point presentations from the last meeting have been put on the past meetings page, along with minutes, etc. He also spent considerable time making arrangements for this meeting. He has also made plans for a trip to Washington to attend the joint meetings of the Interstate Council on Water Policy and Western States Water Council, as well as work on our congressional agenda, which will be discussed later in the meeting. He has now visited all the member states, except Wyoming where we will meet in August. He reviewed the materials in the board packets and described work on a draft MoRAST Directory. He asked the board to review the draft and provide feedback, corrections and updates on who and what information to include. Once finalized, it can be posted on the web site, if that is acceptable.

Budget: Chairman Cooper provided an overview of the budget process and asked David to review the draft budget with the board. He noted that it includes a current year budget for FY08, based on historical figures provided by Kirk Nelson. He said the draft includes a FY09 "status quo" column, a FY09 enhanced budget and a FY10 column which includes the enhancements and the dues needed to support the FY 10 budget if all the enhancements are included (\$12,500 per agency or \$25,000 per state, except Wyoming). The proposed enhancements include additional funds to support the congressional agenda and more outreach.

Chairman Cooper also noted that the board needs to have a policy discussion about how to help improve tribal participation and whether MoRAST should budget money for some tribal travel support. David noted, as an example, it would take \$18,000 to provide six tribes with up to \$750 in travel support for four meetings, but that there are many options and levels of support that could be provided. During the discussion, it was noted that outside sources of funding could also be sought, but that also takes time. Chairman Cooper noted that some options have already been explored without success. After more discussion, a motion was made by Mike Hayden to add \$18,000 to the FY09 enhanced budget for tribal travel support and adopt the proposed budget as otherwise presented. The motion was seconded by Mike McGhee. It was clarified that this would provide for one year funding (FY09) of the tribal travel support with the money coming out of carry over funds. Mr. Pope adjusted the spreadsheet and noted that this would result in an ending balance of \$162,900 for FY09 and FY10, assuming current dues for FY09 and the proposed dues as described above for FY10. The motion was approved with one dissenting vote.

Corps update: Larry Cieslik provide a brief update on current hydrological conditions in the basin and the status of reservoir operations. While the mountain snowpack is near normal, he noted the Corps' runoff forecast is only 19.5 Million Acre feet, based on the dry soil conditions and other factors that contribute to runoff. System storage gained about 2.5 MAF last year, primarily due to higher than normal downstream runoff and the resultant lower releases. Larry explained that the current storage conditions are very close to the 36.5 MAF needed for the March spring pulse, but a decision to run it would not be made until March 1, based on the exact storage amount and other criteria for such an operation. He noted that the total release,

including the additional 5,000 CFS of water released for the spring pulse during minimum service navigation conditions, would still be less than full service navigation releases.

MRRIC status: Mark Rath provided an update on the status of the process to form the Missouri River Recovery Implementation Committee. He noted that the drafting committee met in January and came to consensus on the draft Charter. He said a few changes were made, especially to incorporate some relative minor changes recommended by the Corps of Engineers. The draft Charter has been submitted to Assistant Secretary of Army (CW) for review and approval. While several of the tribes had been involved in the planning process, the Corps will also be taking it to the Basin Tribes through government to government consultation. WRDA 2007 contains a May 8th deadline for the creation of MRRIC. After the Charter is adopted, each Governor and Tribal Chairperson will receive a letter inviting them to appoint a member and an alternate to the Committee, and the process to select the stakeholder members will be announced.

Rose Hargrave noted that additional meetings of the planning group may be needed if there are suggested changes to the draft Charter, perhaps by the tribes. She indicated that there is strong support for the MRRIC draft Charter by the Northwest Division. Mark noted that a problem area is the prohibition in WRDA 2007 for reimbursement of travel expenses for tribal members and stakeholders.

WRDA Implementation Guidelines: Kayla Echert-Uptmor, Chief of Planning for the Omaha District, USACE, made a comprehensive Power Point presentation on the Corps authorities and planning process, and discussed the study authorized by Section 5018 of WRDA, related to mitigation, recovery and restoration of the Missouri River ecosystem. She noted that the Corps planning process identifies problems and potential solutions, would follow the civil works process and be done consistent with the Principles and Guidelines. She said the Corps' implementation guidelines have been drafted and submitted to headquarters, but nothing is final until they are approved. However, she said it is anticipated that it would be an integrated study with an EIS. It will be coordinated with MRRIC, but also involve the public and others through the NEPA process. It will likely be closely related to the Missouri River Recovery Program. She responded to the issues raised by MoRAST in its letter to ASA Woodley related to the guidelines and indicated that the normal Corps study process would not impose sideboards. She said any recommended changes would be considered and made as appropriate through whatever program was involved, or through a new authorization, if needed. In anticipation of the passage of WRDA, some work has been done to help set the foundation for the study, but that is subject to change. It is called the Missouri River Environmental Restoration Program. The study is not viewed as an avenue to rewrite the Master Manual.

Governor Rounds' letter: John Cooper summarized the July 10, 2007 letter South Dakota Governor Rounds sent to ASA Woodley related to a proposed study of the operation and authorized purposes of the Missouri River Mainstem Reservoir System under the 1944 Flood Control Act (FCA), along with the response from Mr. Woodley and other background as to the basis for the request. He said the governor was very interested in the reaction from the other states and potential support for such a study. He discussed the various project purposes, the impacts of extensive drought, as well as the need to support water supply and flow needs both upstream and downstream and other important needs in the Basin. He indicated that some project purposes have proceed large economic benefits, while others have not approached the original expectations and noted the tremendous change that has occurred since 1944. He noted the large value of Mississippi River navigation that could potentially benefit from flow support from the Missouri River, compared to the limited tonnage shipped on the Missouri River and the amount of water needed to support it. As a result, he said Governor Rounds had offered to include an analysis of navigation support on the Mississippi River that may be of interest to some interests downstream. He indicated that South Dakota

had concluded that it would be best to work with the Corps and others to conduct a study to evaluate the changes needed and then seek a modification to the 1944 FCA, as appropriate at that time.

Corps comments: Larry Cieslik provided background information about the operation of the Missouri River Reservoir System. He noted that the Corps looked at supporting flow targets on the Mississippi River during the Master Manual study process. He said there are times during low flows on the middle reach of the Mississippi River when 75% of the flow comes from the Missouri River. However, they do not have authority to operate the reservoirs for the Mississippi River. It is a complex matter and flow support for the Mississippi rather than the Missouri may or may not save water from storage, depending on the targets set. He said there are also concerns about how much flow is needed for intakes and cooling on the Missouri River during non-navigation conditions in the summer, and how much water could be saved given the flow needs for the endangered birds. He noted that the Corps is required to serve all the authorized purposes and balance the uses while recognizing what was deemed to be the dominate project purposes of flood control and navigation, according to court decisions. He noted that if you look at NED only, it may not be very satisfying to some interests. He said the Corps would like to see basin-wide support for any such study. They believe that Congress should authorize the study if it is to be done.

A recess was taken until after lunch.

Presentation by Robert Davis: Dr. Davis made a presentation about how various projects can be and have been valued, as well as the changes that have occurred over time, including the approaches related to fish and wildlife uses. He commented about what has occurred for the Pick Sloan Project. He also provided background about the evolution of federal policy related to the development of the Principles and Guidelines and the net economic development concept, based on his extensive experience with economics and natural resources management, including his work with the National Research Council.

1944 Flood Control Act: Continued discussion occurred regarding the 1944 FCA and Governor Rounds' letter. John Cooper summarized the key reasons for the request for a study by Governor Rounds and the options that may be available. Larry Cieslik noted that the Master Manual studies generated extensive information and took 15 years to complete. Litigation initiated by upper basin states occurred after the manual was revised. He said the Corps operates based on federal law and direction by Congress. If you want more change than they came up with in the Master Manual, it will take action by Congress. He did not think change would occur without broad support in the basin. There was considerable discussion about the nature of studies that might be needed and the amount of support needed. One option is a Section 216 Study, which provides for the review of a completed project. Another option is to seek a new authorization from Congress for a comprehensive study, with its own unique criteria. There was also a discussion of the potential to use some of the information and modeling generated during the Master Manual studies, at least as a place to start, to help evaluate the scope of what may be needed or possible. Larry noted that the Corps is not funded to do additional studies, but the data was there and the state's technical people may be able to use it. Others raised questions about the apparent change in water availability over time, as well as the potential impact of climate change on the water supply. Someone else noted the environmental impacts that have occurred as a result of the project over time.

After the discussion, Ann Bleed moved that MoRAST request a Section 216 study, and in the meantime, MoRAST start the scoping process. The motion was seconded by Mike Hayden and passed with no objection from the Directors present.

Congressional agenda: After a break, the board discussed potential items to support in congress. After discussion, it was a consensus to support funding for the Missouri River Recovery Program, including the

\$15 million needed for the Intake Project on the Yellowstone River, funding for USGS water data programs and solutions that would provide adequate funding for tribal travel to MoRAST and MRRIC meetings, etc. and implementation of the board's action related to a study of whether the current operation of the Mainstem Reservoir System in accordance with the authorized purposes under the 1944 FCA is best meeting the contemporary needs of the Basin.

Other business: David Pope briefed the board on the potential need for Directors and Officers Liability Insurance for MoRAST. He indicated that he had discussed the matter with an insurance agent. State laws likely vary and individual directors may or may not need or want such insurance. It was concluded that each director should check the situation in their state/tribe and be prepared to discuss the matter at the May meeting.

Presentation by Tony Willardson: Tony provided a brief summary of the Western States Water Council role and summarized its recent activities, especially related to the report prepared at the request of the Western Governors Association entitled "Water Needs and Strategies to meet the Future Needs in the West". The report can be found on the WSWC web site. It provides a series of recommendations about such topics as growth and water policy, water data, infrastructure, Indian Water Rights, Endangered Species, and Climate Change, all of which need water or may affect water availability.

Presentation by Ed Theriot: Ed provided background about his role as Director of Environmental Programs for the USACE in Headquarters and the direction he helped set for environmental restoration, which has become one of the Corps major functions. They have learned to use a systems approach and work with partners. They are trying to apply scientific principles to bring these systems back into balance.

Public Comments: None

State, Tribal and Federal Reports:

Kansas – David Barfield indicated that he had been appointed as the new Kansas Chief Engineer. He provided a brief summary of pending water related legislation in Kansas and the status of interstate water litigation. Mike Hayden and Steve Adams noted that some important new land had been acquired for recovery projects in Kansas.

Wyoming – Sue Lowry said Wyoming is in the middle of its "budget" legislative session. She reported on the status of bills related to regulation of Coal Bed Methane and licensing of water well drillers. She also noted that they had just received an application for the Green River upstream of the Flaming Gorge. Briefs are being filed on the MT v. WY case.

Montana – Jeff Hagener said the Wolf has been delisted. He said the snow pack on the east slope was close to normal, but has gone off early the last few years. Salt Cedar is becoming a problem at Ft. Peck. Mary Sexton discussed regulation of Coal Bed Methane water use in MT and the status of several Reserved Water Rights Settlements.

Iowa – Mike McGhee indicated there was an updated analysis underway for groundwater availability due to demand for ethanol. He also reported on ESA issues in South Central Iowa, Zebra Mussels in Rathbun Reservoir and the work of their biologists related to shallow water habitat creation on the Missouri River.

Nebraska – Ann Bleed indicated that they were working hard with the Natural Resources Districts to develop Integrated Management Plans for the Republican River and provided an update on the compact

dispute with Kansas. They are also working on issues on the Platte and the Niobrara River. She had six lawsuits filed against her in one day.

South Dakota – Garland Erbele indicated they were now in the 9th year of drought in Western SD. The Mni Waste intake has now been relocated to deal with low lake levels. Yankton is exploring options for new water supplies. Geno Adams indicated that they are working on a nuisance aquatic species plan and a shoreline plan with the Corps.

North Dakota – Todd Sando reported on water supply and energy development, with lots of issues related to ethanol water needs. He said new federal funding is helping deal with the Ft. Yates intake problem. Canada has filed a suit related to water quality for the NAWWS Project. They are also working with the USBR on the Eastern Dakota water supply project to provide supplemental water to Fargo and Grand Forks from the Missouri river during drought. The budget is good and may provide additional money for infrastructure and tribal needs. Devils Lake is still an issue. Dave Fryda reported on concerns about energy development impacts. He also expressed concern about the continued loss of smelt and low water level impacts to Lake Sacagawea.

Corps of Engineers – Mike George reported on the budget for the Missouri River Recovery Program. The President's budget is \$85 Million for next year, compared to \$50.2 this year and they can now work in all the states due to the passage of WRDA.

USGS – Mark Anderson reported that Mike Meyer is the new Director of the USGS. Climate change research is a major priority.

U.S. Bureau of Reclamation – Gary Davis provided a brief update on the Red River Project and noted that the Corps is now authorized to provide help with fish passage and recovery at the Lower Yellowstone Project.

U.S. Institute for Conflict Resolution – Mike Eng said they were pleased with the work of the MRRIC Planning Committee and they are working on ideas to help with the travel issue through their Native American Program at the Institute.

Announcements: Chairman Cooper asked each state to appoint one or more members to an Ad Hoc Committee to help work on the 216 study issue. Mike Hayden suggested Dave Barfield and Steve Adams from Kansas. Nominations can be made by email exchange.

The May meeting will be in Great Falls, Montana on May 21-22, 2008.

Adjournment: The meeting was adjourned at about 5:15 PM.

Respectively submitted,

// Signed

Tracy Streeter, Secretary