

## Minutes

# Missouri River Association of States and Tribes (MoRAST)

Bismarck, North Dakota

June 16 and 17, 2009

MoRAST Vice-Chairman Mike Hayden called the meeting to order around 8:30 a.m. on June 16, 2009 and chaired the meeting, since Chairperson Sexton had an unavoidable schedule conflict. However, she and some other Directors were able to participate in parts of the meeting by speaker phone. He welcomed everyone to the meeting which was held at the Comfort Inn, Bismarck, North Dakota. Introductions were made for all in attendance.

### MoRAST Directors, alternates and other representatives present:

MONTANA: Mary Sexton (by speaker phone) and Mike Ruggles

WYOMING: Sue Lowry

NORTH DAKOTA: Dale Frink, Todd Sando, Terry Steinwand

SOUTH DAKOTA: Garland Erbele and Jim Riis

NEBRASKA: Brian Dunnigan, Kirk Nelson and Gene Zuerlein

IOWA: Harold Hommes (by speaker phone) and Bernie Hoyer (by speaker phone)

KANSAS: Mike Hayden, Tracy Streeter, Nathan Westrup and Steve Adams

YANKTON SIOUX TRIBE: Basil Heth, Robert Abil

STANDING ROCK SIOUX TRIBE: Chase Iron Eyes, Adrienne Swallow and Byron Olson

THREE AFFILIATED TRIBES: Jessica Blunck and Toni Fettig

STAFF: David Pope, MoRAST Executive Director

**Federal Agencies:** U.S. Fish and Wildlife Service (USFWS): Kim Greenwood, Wayne Nelson-Stastny and Mike Olson; WAPA: Nick Stas and Jeff Irwig; U.S. Army Corps of Engineers (USACE): Jody Farhat, Joel Marcany, Robert Matya, Mike George, Mary Roth, Kayla Eckert Uptmor, Randy Sellers and David Combs; U.S. Geological Survey (USGS) Michael Mac, Joel Galloway and Gregg Wiche; U.S. Bureau of Reclamation (USBR): Denny Breitzman and Rick Nelson.

**Others:** Rebecca Kidder, Attorney; Rick Wadleigh, SWCA; Ryan Bertels, MO Attorney General's Office; and Marty Boeckel, Senator Kent Conrad's Office; Lance Gaebe, Governor Hoeven's Office.

### INITIAL BUSINESS MEETING:

**Agenda:** The revised draft agenda was reviewed and approved through a motion by Tracy Streeter, which was seconded by Sue Lowry. The meeting packets were distributed by David Pope. Most of the packet materials were also distributed prior to the meeting by e-mail. The packets contained copies of the draft agenda, draft minutes, Treasurer's Report and budget information, other administrative materials and Section 108 study materials, including proposed action items.

**Minutes:** A motion was made by Kirk Nelson to approve the minutes as drafted. The motion was seconded by Brian Dunnigan. The draft minutes were approved.

**Treasurer's Report:** The report dated June 16, 2009, was presented by Kirk Nelson. A motion was made by Terry Steinwand to approve the Treasurer's Report. The motion was seconded by Garland Erberle and passed without objection. Kirk Nelson also noted that he had explored the use of the Nebraska Community Foundation as an entity for managing MoRAST funds and paying bills. The concept would be to provide for an independent entity to handle these matters and provide reports to MoRAST. However, there would be a 3 ½ % fee for this service. Kirk noted that this would not likely save him work as Treasurer, but it is an option for fund management. The Board discussed the matter but ultimately concluded it may not be necessary to utilize such a system for our situation and decided to defer the matter for now.

**Executive Director's Report:** David Pope reviewed the remaining contents of the meeting packet and summarized his primary activities since the last meeting. He noted that he had worked on matters related to the Section 108 study and prepared a draft document of potential issues and questions, worked with the Ad Hoc Committee to revise the Work Plan and with the Executive Committee regarding the potential renewal of the Executive Director contract, all of which will be considered later in the meeting. He noted that he also took follow up actions from the March meeting and made arrangement for this meeting, etc. After consultation with the Executive Committee, he provided information to Congress in accordance with our Congressional Action Plan adopted in March and continued to monitor actions in Washington. He noted that participation in the Interstate Council on Water Policy (ICWP) helped with his monitoring effort. He noted that he also continued to monitor activities related to the Missouri River Recovery Program and attended the May MRRIC meeting in Bismarck, ND. Finally, he continued to attend various events of interest as a part of our outreach function.

**Old Business:**

Mr. Pope reviewed a Progress Report of his activities for FY 2008 and 2009. The Board also reviewed the draft work plan for FY 2010-2011. Sue Lowry, who had been asked to Chair a committee to review the work plan, provided some background information and explained the process used to update the MoRAST work plan. She noted that it had been restructured into two major categories: 1) MoRAST work product items and 2) MoRAST business items, which are more organizational in nature. She said the committee reviewed a previous draft and comments of committee members were incorporated to produce the proposed version of the work plan. During the discussion, it was suggested that the amount of time proposed to be spent on Item A dealing with Congressional and Section 108 study activities be increased by 5% and that Item C dealing with coordination and outreach be decreased 5%. Sue Lowry moved for approval of the draft work plan for FY 2010-2011 with the changes as noted. Tracy Streeter seconded the motion and it was passed without objection.

Kirk Nelson reported on behalf of the Executive Committee regarding its recommendation for renewal of the Executive Director contract with Pope Consulting, LLC. He indicated that the Committee felt Mr. Pope had done a very good job dealing with the challenges faced by MoRAST and noted that he had incurred more costs than expected two years ago. As result, the Committee recommended increasing the contract amount to \$132,000 per year for fiscal years 2010 and 2011. The contract amount includes office expenses and travel, etc. Kirk Nelson moved approval of the proposed contract for that amount. Sue Lowry seconded the motion and the motion was passed with one no vote - Harold Hommes of Iowa.

### **New Business:**

Dues for FY 2010 (July 1, 2009 to June 30, 2010) were reviewed. It was noted that during the May 2008 meeting, dues were set at \$25,000 per State, except for Wyoming that participates with only one agency, or \$12,500 per State agency member. Tribal dues had been waived through June 30, 2009. Dues for each voting Tribe are \$1,250 for FY 2010. It was noted that the States and Tribes agreed to amend the Bylaws at the December 2008 MoRAST meeting to increase the number of Tribal Directors to a number equal to the number of State Directors (currently 13) and to set Tribal dues at 10% of the amount for a State agency member, effective July 1, 2009. The Bylaws allow the Tribes to collectively determine which Tribes will be the voting, dues paying Tribal members (currently can be up to 13). All other Tribes in the basin can participate as non-voting members without dues. Basil Heth suggested that the Yankton Sioux Tribe and David work with the Great Plains Tribal Chairman's Association and the Montana-Wyoming Tribal Leaders Council to provide information about dues for Fiscal Year 2010.

With regard to payment of dues, it appeared each State will be able to pay dues for FY 2010, except Harold Hommes noted that Iowa may only pay a portion of its dues depending upon what happens in the next month or two, as two or three of the agencies that normally share the dues may not have sufficient funds to do so this year due to budget shortfalls. Chairperson Sexton noted that it was her view that MoRAST should remain flexible in determining how to interpret the Bylaws to deal with a situation when a member cannot pay the full dues during a budget shortfall and encouraged continued participation by Iowa. Under these circumstances, she said she thought if a State can pay one-half of the full dues, it would be fair for it to continue to have one vote on the MoRAST Board. That view was also shared by others.

Mike Hayden asked if there was an objection to the Chairperson's recommended interpretation of the Bylaws. There was not. The proposed action was summarized as follows: That if Iowa can only pay one-half the full dues for FY2010, or \$12,500, it should be allowed to retain one vote on the MoRAST Board. The voting privileges for the second Iowa Director would be suspended if the balance of the \$25,000 in FY2010 dues is not paid by October 1, 2009. Therefore, with no objection, Mike Hayden noted that a consensus had been reached.

The Board reviewed a document showing FY 2008 actual expenses, the FY 2009 and FY 2010 adopted budgets and the income/expenditures to date for FY 2009 along with proposed changes to the previously adopted FY 2010 budget and a proposed FY 2011 budget. It was noted that these proposals include significant reductions in spending to balance with the projected income. Kirk Nelson moved approval of the proposed changes to the FY 2010 budget and adoption of the FY 2011 budget. Motion was seconded by Sue Lowry and approved without objection.

Mr. Pope indicated that ICWP dues for FY 2010 are \$3,500.00. He noted that we had joined ICWP last fiscal year, but the payment is not explicitly set forth in the budget due to the timing of when it was adopted. However, he indicated that he believed there were adequate funds in the budget to pay the dues and recommended approval of payment for the dues. Sue Lowry noted that she thought it was valuable for MoRAST to belong to ICWP. Mike Hayden asked if there was a consensus to pay dues at \$3,500.00. Based on the response, the action to pay the ICWP dues for \$3,500.00 was declared a consensus.

**Presentation on Cultural Resources:** The Great Plains Tribal Leaders Association made arrangements for Rapid City Attorney Rebecca Kidder and Byron Olsen, Archeologist for the Standing Rock Sioux Tribe, to make presentations regarding cultural resources and issues related to the 1944 Flood Control Act. They outlined the provisions of federal law and legal requirements to protect these resources, including consultation and various other specific actions. Brian reviewed the current status on the Standing Rock Reservation, outlined actions that should be taken by the USACE and noted significant concerns. Both Rebecca's PowerPoint presentation and Byron's handout are posted at: <http://www.mo-rast.org/Meetings/PastMeetings.htm>.

**Status of Section 108 Study:** USACE Planning Chiefs for the Omaha District (Kayla Eckert-Uptmor), and Kansas City District (David Combs) shared information with the group about preliminary plans for the 108 study. They indicated that the two Districts would co-lead the study. They will be naming project managers, developing advisory teams and an executive committee as soon as possible. The Corps is starting to work on the study "management plan". They encouraged us and other groups to provide input regarding the study. They recognize that good communications is critical. They are developing an engagement strategy with plans for a website, listening sessions, etc. They will be conferring with their senior leadership soon. There are many other questions and issues to resolve regarding the study, etc.

Mr. Pope noted that a draft list of issues and questions for the Section 108 study was included in the meeting materials. He noted that most of the background information came from earlier MoRAST documents. The group discussed the 108 study and reviewed the draft list of potential issues and questions. Some suggestions were made for change, especially related to language about Tribal Water Rights.

The Board did not take action on the draft issues document, but will take more input from the States/Tribes and try to finalize it during or before the next meeting in October. Subject to some post meeting feedback from the Corps leadership, it was concluded that MoRAST should propose a "kick off" event for the study in conjunction with the USACE at our October meeting. David was asked to help make potential arrangements, check schedules, etc., and confer with the Executive Committee as needed. We will likely invite leaders from Washington and the Division/District offices of the Corps of Engineers to participate. Given the past leadership and interest in the study, South Dakota representatives will consult with Governor Rounds to see if he would be able to help participate in the event.

**Current Conditions and Corps update:** Jody Farhat, USACE, Chief of Missouri River Basin Water Management, Northwest Division, Omaha, NE., provided an update on current water management operations. She noted the significant improvement in reservoir storage this year. She noted that the Corps is willing to meet with representatives of MoRAST again this year regarding the draft AOP process, if desired. (Her PowerPoint can be viewed at: <http://www.mo-rast.org/Meetings/PastMeetings.htm>)

**MRRIC Update:** Mary Roth, USACE MRRIC Program Manager, Omaha, NE., gave an update on the status of the Missouri River Recovery Implementation Committee (MRRIC). Recovery Program website is at [www.mrric.org](http://www.mrric.org). The committee recently met in Bismarck, ND., and has met five times since last September. MRRIC will be meeting July 21-23 in Pierre, SD., September 22-24 in Montana and November 3-5, 2009 in Wyoming. The Committee established operating procedures and working groups, selected a Chairman and Facilitation Team and reached preliminary consensus on some issues,

such as recommendations on the Purpose and Needs Statement for MRERP. One third of the stakeholder members on the Committee will be reappointed for a three-year term or new members selected. See the Committees website for more information about MRRIC meetings and the application process for stakeholder positions: [www.mrric.org](http://www.mrric.org). (Ms. Roth's PowerPoint presentation may be viewed at <http://mo-rast.org/Meetings/PastMeetings.htm>.)

**MRERP Update:** Randy Sellers, USACE Project Manager and Wayne Nelson-Statny, USFWS, provided an update on the Missouri River Ecosystem Restoration Program (MRERP). The Cooperating Agency Team met recently to provide input. Input will also be received through Tribal consultation, MRRIC and the public meetings. Input will be received on the Purpose and Needs Statement through this fall and scoping meetings will be scheduled soon. Additional information can be found at: <http://www.moriverrecovery.org/mrrp/f?p=136:11:1788228194396538::NO>.

### **Reports from Federal Agencies:**

**Western Area Power Administration (WAPA):** Nick Staas reported that WAPA is working on a potential \$3.25 billion expansion of transmission lines. He also noted that their new strategic plan is now available. He also noted that a draft wind analysis is being prepared in conjunction with the USFWS who is the joint lead for the project. It will show the accumulative impacts of wind development. Additional information can be found at: [www.wapa.gov](http://www.wapa.gov) including the strategic plan and status of the wind power EIS.

**U.S. Bureau of Reclamation (USBR):** Denny Breitzman of the Bismarck area office indicated that Reclamation received \$1 billion through the stimulus program of which \$232 million will go to the Great Plains Region. He noted that about \$200 million of that will go to rural water projects. Of that, he said about \$60 million will be spent in Montana with the rest going to North Dakota and South Dakota and will include Tribal and non-Tribal projects. He noted another \$32 million will be spent for infrastructure repair and projects in other States in the region. He noted that FY 2010 funding should include more money for rural water projects and implementing the Platte River ESA program.

**U.S. Army Corps of Engineers (USACE):** Bert Matya of the Omaha District and David Combs of the Kansas City District provided information regarding the funding made available to the Corps through the stimulus program, which is about \$4 billion nationwide. Considerable funding was provided for civil works projects including operation and maintenance, general construction projects and some for general investigations. Most of the work will relate to infrastructure projects that can be obligated as quickly as possible.

**U.S. Geological Survey (USGS):** Gregg Wiche indicated that \$30 million was received on the water side through stimulus projects. Of that, \$15 million will be used for deferred maintenance related to gaging stations and \$15 million will be used for stream gage upgrades, such as data collection platforms. He also noted that the National Streamflow Information Program budget has been recommended for an increase from \$22.4 million to \$27.4 million and expressed appreciation to MoRAST and other organizations that have help support increased funds for the stream gage program. However, he noted that funding continues to be flat for the cooperative water program that also includes gages and interpretive studies. Michael Mac reported on funding received to improve the office infrastructure at the Biological Resources Center in Columbia, Missouri. He also noted that it appears there will be budget increases related to climate change research for FY 2010.

**U.S. Fish and Wildlife Service:** Kim Greenwood reported on the Tribal Wildlife Program. She indicated that \$7 million will be provided, but that is for 562 Tribes in the country. She also noted that there may be some provisions in the climate change bill of interest related to fish and wildlife resources.

**Discussion of Federal budget and programs:** There was discussion about the Yellowstone River Project near Intake, Montana, and it was noted that the Bureau of Reclamation, Corps of Engineers, State of Montana and others are working to expedite the completion of the project. Mike Ruggles of Montana FWP noted that it is a good project and is supported by Montana, but there is also some concern about not continuing work on the Fort Peck mini test, which may also turn out to be needed to recover the pallid sturgeon. Montana does not believe the agencies should wait until they know if the Yellowstone Project is successful, as it may then be too late to work on the Fort Peck mini test.

**Section 108 Study:** The Board continued to discuss the study and the next steps that will be taken. The Corps indicated there would be listening sessions, the scoping process, status reports and opportunities for engagement by all parties during the study.

The meeting was recessed for the day. *Evening social Event was canceled due to rain (Riverboat Cruise)*

**Resumed Business Meeting:**

The meeting was called back to order at approximately 8:30 a.m. on June 17, 2009. There was some additional discussion regarding the relationship between the 108 Study and the development of the Missouri River Ecosystem Restoration Plan (MRERP). It was generally felt that it would be better to complete the Section 108 Study before MRERP is completed.

Bernie Hoyer indicated that the State of Iowa will be meeting internally about its views regarding the Missouri River and the Section 108 Study. He noted that the Mississippi River is very important to Iowa and that transportation is a major issue.

Dale Frink and Terry Steinwand introduced Lane Gaebe, Deputy Chief of Staff for North Dakota Governor Holden's Office and welcomed him to the meeting with brief comments.

Mr. Pope noted that in past years MoRAST had asked its technical committee, which consists of State and Tribal water management and fish and wildlife staff, to meet in July with the Corps of Engineers regarding the AOP process so as to be able to provide preliminary recommendations to the Corps early in the process. He asked the Board if they would like that to be continued this year. He also noted that the technical committee could work on refinement of the draft issues and questions document regarding the Section 108 study for later consideration by the Board. There was consensus of the Board to proceed with that process this year. Mr. Pope indicated that a draft letter regarding the AOP would be circulated to the Board before being sent to the Corps.

**Update on North Dakota Flooding:** Dale Frink, Todd Sando and Terry Steinwand provided an update on the spring flooding that occurred in North Dakota. They indicated that this was an extensive event which set many records and caused extensive damage in North Dakota, including the Fargo area, as well as the Bismarck area below Garrison Reservoir for the first time since the reservoir was constructed, largely due to ice. They also noted that it illustrated the need for additional flood control measures in the Fargo area. Finally, they noted that the flooding caused significant action subsequent to the flood related to mitigation and other responses.

**Missouri River Floodplain Dynamics:** Gene Zuerlein made a PowerPoint presentation on behalf of the Nebraska Game and Parks Commission regarding floodplain dynamics and a “Sustainable Middle Missouri River Concept”. A copy can be viewed at: <http://www.mo-rast.org/Meetings/PastMeetings.htm>

**State, Tribal and Federal Reports:** Brief State, Tribal and Federal agency reports were given by those present.

**Yankton Sioux Tribe** – Basil Heth reported that terms expire for several members of the Tribal Council this fall so it is uncertain whether there will be changes in the people that participate in MoRAST from the Tribe. He indicated that his Tribe has heavy feelings regarding the river and its impact on Tribal people, appreciates these meetings and the sharing of information. He will encourage future participation by the Tribe.

**Three Affiliated Tribes** – Tony Fettig indicated she enjoyed the meeting and looked forward to attending future meetings.

**Federal Agencies –**

USGS - Mike Mac, USGS, provided an update on their monitoring of the spring pulse, in conjunction with the Nebraska Game and Parks Commission, where they track sturgeons in various parts of the river. This information will be summarized for the Corps and others. Bob Swanson of the Nebraska Water Science Center reported on water quality studies as well as studies related to the characterization of aquifers in Nebraska and the Northern High Plains Aquifer.

USFWS – Kim Greenwood reported that the climate security bill may put money into the fish and wildlife programs for the States and Tribes. Wayne Nelson Stasney reported that Sam Hamilton had been appointed as Director of the U. S. Fish and Wildlife Service.

WAPA – Nick Staas noted that applications for permits had been filed with FERC for potential future Kinetic energy projects on the Missouri River.

**North Dakota** – Todd Sando reported on the status of rural water system projects and the Northwest Area Water Supply Project. Terry Steinwand reported on a cooperative agreement with Montana related to paddlefish.

**Nebraska** – Kirk Nelson noted that urban areas in Nebraska are starved for outdoor recreation. His agency does not want to give up on the middle Missouri as an important reach for recreation and other uses. Brian Dunnigan indicated that his agency made it through the budget process okay this year, even though funding was tight. He reported that several bills related to water were considered by the Unicameral.

**Wyoming** – Sue Lowry reported that a special master had been appointed by the U.S. Supreme Court in the case of *Montana v. Wyoming*. She noted that the Court had just denied a Wyoming motion for dismissal, but ruled on four legal issues in the case that will help guide the litigation.

**Kansas** – Tracy Streeter indicated that considerable O&M work is being done on Corps projects in Kansas. He noted that since the State of Kansas owns water supply storage in 13 Corps reservoirs, the State is seeking clarification as to whether it will have to pay a pro-rata share of the extra O&M spending as a result of the work funded by the stimulus program. If so, it will cause a large spike in the price used

by the State to market water from these projects. He also noted a regional group from both Kansas and Missouri is seeking cost share funds for the Missouri River degradation study. Steve Adams reported that the State is trying to reach agreement with the Webster Irrigation District and the USBR regarding enhanced recreation benefits at Webster Reservoir in Northwest Kansas.

**South Dakota** – Jim Riis reported on the large snowfall in the northern Black Hills and its impact on tributary flows to Oahe Reservoir. He said they are experiencing nice conditions for habitat this year. He noted that South Dakota would be hosting the July MRRIC meeting in Pierre. Garland Erbele reported on important water supply projects in the State. He also reported on the first meeting of the Title VII Missouri River Sediment Task Force.

**Montana** – Mike Ruggles indicated that Montana FWP is undergoing reorganization. He also noted that one of our MoRAST Montana Directors, Chris Hunter, has announced his retirement. He also noted that John Tubbs, the previous Water Division Administrator in Montana DNRC is leaving to become Deputy Assistant Secretary of Interior for Water and Science. He expressed appreciation for MoRAST support for the Yellowstone Intake Project and noted that Montana was also supporting the recovery of the pallid sturgeon below Fort Peck Reservoir, including the need to further evaluate the potential for a larger contribution of warmer, more turbulent water from the Milk River.

**Other action and Future MoRAST meetings:**

Mr. Pope noted that one of the interested parties had requested MoRAST support for the degradation study in the Lower Missouri River. Tracy Streeter had mentioned the study in his report and MoRAST had received a presentation from the Corps a year or so ago about this serious issue. Mr. Pope asked the Board if we should support the study. The Board took action by consensus to support the study and suggested that David work with our Kansas members in that regard.

The next meeting will likely be held in Pierre, SD., during the last half of October 2009. Mr. Pope will check schedules and try to avoid schedule conflicts with other groups, etc.

Mid December, 2009 - a conference call meeting will be held, if needed. Potentially, a face to face meeting may be held, depending on the circumstances.

March 15-16, 2010 – Lied Center, Nebraska City, NE. This meeting will be held just before MRNRC Conference and BiOP Forum (March 17-19), as we have done in past.

The meeting was adjourned at approximately at 11:40 a.m. on June 17, 2009.

Respectfully submitted,

//s

Tracy Streeter,  
Secretary

Note: These minutes were approved at the October 29-30, 2009 MoRAST meeting