

# Meeting Minutes

Missouri River Association of States and Tribes (MoRAST)  
Fort Peck, Montana

August 30, 2007

Chairman John Cooper called the meeting to order shortly after 8 AM MDT, and welcomed everyone to the meeting, which was held at the Montana Fish, Wildlife and Parks fish hatchery in Ft. Peck, Montana. He thanked Montana for hosting the meeting and for putting together an excellent tour yesterday. Introductions were made for all in attendance:

MoRAST Directors, alternates and other representatives present:

MONTANA: Mary Sexton, Jeff Hagener, John Tubbs, Mike Ruggles, Tim Bryggman, Pat Gunderson

WYOMING: Jody Pring

NORTH DAKOTA: Terry Steinwand, Todd Sando

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

NEBRASKA: Brian Dunnigan, Nate Donovan

IOWA: Mike McGhee, Richard Leopold

KANSAS: Mike Hayden, Tracy Streeter, Steve Adams, David Barfield

TRIBES: Elizabeth Wakeman

STAFF: David Pope, MoRAST Executive Director

FEDERAL AGENCIES: USBR, Dan Fritz, Billings, MT; Fish and Wildlife Service, Mike Olson, Bismarck, ND and Wayne Nelson-Stastny, Yankton, SD; WAPA, Nick Stas, Billings, MT and Gene Liebelt, Ft. Peck, MT; USACE, Larry Cieslik, Rose Hargrave, Mary Roth, Northwest Division, Omaha, NE and Teresa Reinig, Omaha District, Omaha, NE;

OTHERS: Buzz Mattelin, Conservation Districts, Culbertson, MT, Vicki Marquis, Missouri River Conservation Districts Council, Cascade, MT.

The draft agenda was accepted with no changes. Jeff Hagener provided a brief overview of the relatively new fish hatchery and offered to provide a tour later for anyone interested.

**Business items:** The minutes of the June 29, 2007 conference call had previously circulated for review. David Pope noted that the dates in reference to this meeting were incorrect. Mary Sexton moved their adoption with the dates corrected. Mike Hayden seconded the motion and the minutes of June 29, 2007 were approved.

Chairman Cooper provided a brief summary of the status of administrative services that have been provided by Mni Sose. Payment for past services has been resolved after discussion with Tony Provost, after some financial adjustments to deal with gaps in service. David will provide administrative services for MoRAST in the future through his contract.

David passed out copies of the draft minutes for the May 22-23, 2007 meeting in Rapid City, South Dakota, which were prepared by Norma Lonehill of Mni Sose, with suggested edits by David. Chairman Cooper asked the board to review these, but action on them will be delayed until the next meeting.

Chairman Cooper also indicated that a written summary is also being prepared by Mni Sose for the meeting co-sponsored by MoRAST with Assistant Secretary Woodley, the Tribal Chairs and Governor's representatives, which was held in Ft. Pierre, South Dakota on July 10, 2007. He said it was well attended with nine Tribes represented, six States and Federal officials from several agencies. He said the meeting was facilitated by Steve Willard and went well. It also included a reception at the Governor's Mansion. Rebecca Kidder of the Standing Rock Sioux Tribe made a detailed Power Point presentation about Tribal issues, especially related to the Corps projects, such as impact to water intakes, cultural resources and economic issues, and there was time for discussion with the Assistant Secretary of Army. He noted that Ron His Horse Is Thunder, Chairman of the Standing Rock Sioux Tribe made comments and has been helpful in resolving the government to government consultation issue related to participation in MoRAST meetings. However, there are still outstanding issues related to the difficulty of funding travel to meetings and dues, etc.

There was brief discussion of the need to seek grants or other ways to help the Tribes with travel to our meetings, which will also be a problem for MRRIC, as WRDA does not allow federal funding for travel to its meetings. One suggestion was to consider holding one of our meetings at the same time as the Mni Sose Annual Meeting.

Nate Donovan provided a written treasurers report on behalf of Kirk Nelson, who could not attend the meeting. The report contains information for MRBA and MoRAST, since MoRAST will receive the balance of funds once MRBA is dissolved. He noted that the process to dissolve MRBA is almost complete, and that information will be sent out when it is available. The 501c3 application for MoRAST has been approved, which is a big step in getting these matters resolved. Action on the Treasurers report was delayed until Nate could contact Kirk about clarification of whether the balance included the final payment for the State of Missouri payout.

Discussion occurred about the budget and level of dues for FY09, which starts July 1, 2008. Current income is \$130,000 with \$10,000 per member agency (\$20,000 per State, except for Wyoming, which only participates with one agency). Tribal dues have not been set yet. Mike Hayden noted that more funds would be needed next year and moved that the dues be raised to \$12,500 per agency. Motion was seconded by Garland Erbele. There was discussion about the timing of agency budgets and the need for budget

projections for next fiscal year, especially with regard to where we will be by June 30, 2009. A request was made for additional budget information and projections to be provided at the next meeting. The motion was withdrawn.

Mary Sexton made a motion to waive Tribal dues for FY08 and 09. Motion seconded by Mike Hayden and passed. It was requested that each State touch bases with its Tribal liaisons and work on greater Tribal participation.

It was noted that a vacancy currently exists for the office of Secretary due to the selection of David Pope as Executive Director. A motion was made to elect Tracy Streeter of Kansas to fill the unexpired term of Secretary. It was noted that this will maintain the balance of two water management and two fish and wildlife agency directors on the Executive Committee. The motion was seconded by Mike McGhee and passed.

Chairman Cooper noted that David will be sending out a request for information so we can better complete our list of contacts for alternates, committee members, other State and Tribal officials you want to receive MoRAST notices and other information, and stakeholders you want on the list. David will also use this for the distribution of the future MoRAST newsletter. John Cooper also asked that the Directors to furnish Congressional contacts that we may need in the future.

At this point, a break was taken and a brief tour of the fish hatchery occurred.

**USACE Update:** Larry Cieslik provided a brief update on the condition of the Missouri River Reservoirs and system operation. Runoff above Ft. Peck and Garrison was 30% of normal for July, but there was good runoff downstream so that reduced the need for reservoir releases. Navigation will end on October 26<sup>th</sup> at the mouth of the river. The draft AOP process has started and meetings have been scheduled for around mid October. A meeting was held with the MoRAST AOP Committee in Omaha on August 21-22, 2007. David helped summarize the results of the meeting and expressed appreciation for Larry making his staff available for the discussion, which was helpful. Larry noted the continual challenge to balance all the uses in accordance within the flexibility in the Master Manual. Navigation flows were not provided this year for the upstream reaches, except when commercial barge traffic was using the river to conserve water. There are also needs related to adequate water for marinas and thermo power plants. The August runoff forecast is for 21 Million acre feet this year. Further discussion occurred about reservoir “unbalancing” and the need to minimize impacts to fisheries. The next “favored” reservoir in the rotation is Garrison for next year. It turned out that they were all up this year.

Rose Hargrave expressed appreciation for everyone that helped with the tour for the Mississippi River Commission in August – they had positive feedback from them. She introduced Teresa Reinig, new project manager in the recovery program for the Omaha District, who works for Mike George. Rose also provided a brief update on the degradation issue, which is of great concern now. As an example, the river bed has dropped about 12 feet since 1945 in Kansas City and 2 to 3 feet at Rulo, NE. At this

point, the suspected reasons include reduced sediment, channel work, and sand and gravel mining. This is causing problems for water intakes, pipeline crossings and aquatic losses and results in the need for more water to be released. A study has been funded but only for about \$100,000, and more funding is needed. It was agreed that a future agenda should include more detail about this issue.

**MRRIC update:** Dave Barfield gave an update on the status of the Missouri River Recovery Implementation Committee (MRRIC) Planning Committee process that is underway. A two day meeting in Billings, MT was just completed and progress is being made. The process got off to a slow start but the last two meetings have been better. The following is the status of several significant issues:

- 1) The decision process – the committee has tentatively agreed to use a consensus process, as many on the committee believe that recommendations must be something they can all live with.
- 2) Membership – big topic, not done. Will likely include one member from each Tribe and State, with provisions for alternates and around 24 stakeholders from 6 or 8 purposes plus an at large group. The current Drafting Committee may serve as the first stakeholder members.
- 3) Science – lots of skepticism – some want independent review. Missouri is pushing language that recovery should not harm anyone.
- 4) Funding for travel is a big issue and the pending WRDA language does not allow it.
- 5) Role of the federal agencies – another big issue, currently undecided as to whether they should participate or not as members.

There will be additional meetings in September, October and November with a public workshop, November 8, in Omaha. Vickie Marquis, a member of the Drafting Committee provided some additional comments, especially about the scope and purpose. It initially started with the WRDA language, but some want to add more detail. Mark Rath, a Drafting Committee member, noted that every stakeholder group seems to want a member and the committee may get too big. He thinks one member per State can work if we coordinate, like we have been doing through MoRAST, between agencies.

**MRBIR:** David noted that he had been invited to make a presentation about MoRAST to the Missouri River Basin Interagency Roundtable (MRBIR) in Bloomington just after the next MRRIC meeting, which he will also plan to attend, at least in part. This will be an opportunity to provide information and help develop the liaison contacts for MoRAST called for in our bylaws.

**Legal and legislative update:** David also provided the legislative/legal report on behalf of David Cookson, who could not attend the meeting. David visited with Dave Cookson prior to the meeting. With regard to WRDA, he noted that both the House and Senate passed versions of a WRDA bill. The Conference Committee has reached agreement and the House has passed the Conference Report. It contains the Missouri River provisions that we have supported in the past: The authorization for recovery work in the upper

basin, the Intake, Montana project (that we viewed yesterday) and the MRRIC language. The Senate attempted a recent vote, but due to an objection, it won't take up the Conference Report after the August recess, probably next week or the week after. Since both houses passed bills with large margins, WRDA is expected to pass. A motion was made by Jeff Hagener to support the passage of the Conference Report. Motion was seconded by Terry Steinwand and passed.

Dave Cookson and David may make a trip to Washington DC at some time in the future to get acquainted with his contacts, perhaps prior to next year's budget cycle.

David said it was his understanding that most of the past Missouri River litigation has been completed. There is still an appeal by the State of Missouri of the Corps decision to amend the Master Manual for the Spring Rise pending before the 8<sup>th</sup> Circuit.

**Treasurer's Report action:** It was reported by Nate Donovan that final information could not be obtained, but he thinks the State of Missouri payment has been made and would not be included in the balance shown in the Treasurer's report. Motion made by Mike Hayden to approve the Treasurer's report. Second by Jeff Hagener and motion passed.

**Montana Reserved Water Rights Compact Commission:** Mary Sexton introduced Susan Cottingham, Director of the Montana Reserved Water Rights Compact Commission, which has worked for years to negotiate settlements of Federal Reserved Water Rights with American Indian Tribes and Federal agencies in Montana. Susan spoke to the group by telephone and described the process used in Montana and the substantial success they have achieved in settling almost all of the claims, involving seven Tribes and several Federal agencies. She said the Commission is an eight member board appointed by the Governor, legislature and Attorney General. The benefits of this approach have been to resolve claims by settlement instead of litigation, protect State based water rights, allocate important water to the Tribes and provide Federal and State money for Tribal projects. The process involves negotiated settlements, approval by the Montana Legislature, Tribal governments, the Montana Water Court as a part of the adjudication process and Congress, in the case of Tribal Water Rights. Several Tribal Compacts are resolved and most of the rest are close to being resolved, although Congressional action will still be needed in some cases. They have also resolved claims for 10 National Forests that took 15 years and included instream flows. The Commission is scheduled to sunset in 2009 and they hope to meet that deadline. In response to questions, she noted that these are "Compacts" and they include provisions for administration, dispute resolution and a "reopener" provision, in case that is ever needed. The Compacts are all on line through the Montana DNRC web site.

**Committee Reports:** David reported that the MoRAST ad hoc AOP Committee, which consists of the Water Management Committee and the Fish and Wildlife Committee (MRNRC) had a good meeting in Omaha on August 21-22. See the USACE report for additional discussion of this matter.

Wayne Nelson-Stastny reported that he received good feedback from MRNRC members regarding the MoRAST AOP Committee process that they were a part of. The fall MRNRC business meeting is September 25-27. The Spring Missouri River Conference will be held February 26-28, 2008 at the Lied Center in Nebraska City, NE. It will focus on science with good speakers on ecosystem and increased benefits from recovery. They will have a plenary targeted to leaders in the basin on February 26, 2008. February 25 may be a good time for a MoRAST board meeting.

**Other reports and discussion:** Mike Olson reported that Mitch King had left his position as Regional Director for Region 6 of the Fish and Wildlife Service and that Steve Gerden was the Acting RD. The lead for the Missouri River will stay with Region 6. He said the week of February 25 may be an opportunity for the MRRIC Charter to be signed, if all goes on schedule. He noted that there may be some opportunity for coordination grants for Tribal travel from either the Service or EPA.

Vicki Marquis of the Missouri River Conservation Districts Coordination Council expressed appreciation for MoRAST coming to Montana and taking the tour yesterday. She provided an overview of the Council's activities and the opportunity to form coalitions to help resolve resource issues. Buzz Mattelin, Chairman of the Montana Association of Conservation Districts provided some background on Conservation Districts throughout Montana and the rest of the country.

Nick Stas provided an update on recent action by Congress to require a study related to the integration of hydropower and wind energy. He said more information is available on their web site.

**Upcoming meetings:** The next meeting of MoRAST will be held in Pierre, South Dakota starting about 1 PM on December 11 and ending about 12:30 PM on December 12, 2007. The agenda will include presentations on Salt Cedar invasive species, a more in depth presentation on the river degradation issue and a report on ecosystem recovery.

It was decided to hold an all day board meeting on February 25, 2008 in Nebraska City, NE, just in advance of the MRNRC Annual Missouri River Conference so that attendees at our meeting can stay and attend part or all of the conference.

The meeting adjourned at just after 12:30 PM, MDT

Respectively submitted,

Tracy Streeter, Secretary