

Minutes

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

March 24 2009

MoRAST Chairwoman Mary Sexton called the meeting to order around 8:30 a.m. on March 24, 2009, and welcomed everyone to the meeting which was held at the Crowne Plaza Hotel in Billings, Montana. Introductions were made for all in attendance.

MoRAST Directors, alternates and other representatives present:

MONTANA: Mary Sexton, Chris Hunter, Tim Bryggman and Mike Ruggles

WYOMING: Sue Lowry, Jodee Pring

SOUTH DAKOTA: Jim Riis

NEBRASKA: Brian Dunnigan and Gene Zuerlein (by speaker phone)

IOWA: Bernie Hoyer (by speaker phone)

KANSAS: Mike Hayden, Tracy Streeter and Steve Adams

NORTHERN ARAPAHO TRIBE: Ron Oldman

FLANDREAU SANTEE SIOUX TRIBE: Elizabeth Wakeman

STAFF: David Pope, MoRAST Executive Director

Federal Agencies: US Fish and Wildlife Service (USFWS): Wayne Nelson-Stastny, Yankton, SD, Mike Olson, Bismarck, ND and Henry Maddux, Denver, CO; WAPA: Nick Stas, Billings, MT; US Army Corps of Engineers (USACE): Larry Cieslik, Jody Farhat, Rose Hargrave and Bobby Lorna, Northwest Division, Omaha, NE; Mike George, Kayla Eckert Uptmor, Randy Sellers, Brad Thompson, Mary Roth, Joel Ames, Teresa Reinig and Roy McAllister, Omaha District, Steve Fisher, Kansas City District; US Geological Service (USGS): Robert Swanson and Rick Wilson, Lincoln, NE, John Kilpatrick, Bozeman, MT; US Bureau of Reclamation (USBR): Gary Campbell and Gary Davis, Great Plains Region, Billings, MT; National Park Service (NPS): Suzanne Gucciardo, Omaha, NE; U.S. Institute for Environmental Conflict Resolution (ECR): Brian Manwaring, Tucson, AZ and General Accounting Office (GAO): Jay Spaan, Dallas, TX (by speaker phone).

Others: Ryan Bertels Missouri Attorney General's Office, Jefferson City, MO; Robert Davis, Consultant, Boulder, CO; Paul Lepisto, Izaak Walton League, Pierre, SD, John Shadle, NE Public Power District, Columbus, NE, Elizabeth Galli-Noble, Center for Invasive Plant Management, MSU, Bozeman, MT and Burt Williams, The Nature Conservancy, Billings, MT.

It was noted that attendance was down due to the extraordinary circumstances that included heavy snow that closed Interstate highways and other roads through South Dakota, floods in North Dakota and other travel restrictions.

INITIAL BUSINESS MEETING:

Agenda: The draft agenda was reviewed and meeting packets were distributed. The draft agenda was in the meeting packets. The draft agenda, and earlier versions of it, had been distributed by

e-mails along with notices of the meeting at various times prior to the meeting, along with the rest of the contents of the meeting packets.

Minutes: A copy of the draft minutes of the December 1-2, 2008 were in the meeting packets. David Pope suggested that a correction be made to the minutes on page 9 under the Congressional Plan of Action section where Rebecca Kidder was incorrectly referred to as being with the Cheyenne River Sioux Tribe. Tracy Streeter moved approval of the minutes for the December 1 and 2, 2008 meeting, with the correction. The motion was seconded by Sue Lowry and passed without objection.

Treasurer's Report: The report was presented by Gene Zuerlein on behalf of Treasurer Kirk Nelson, who could not attend. A copy of the Treasurer's Report was in the meeting packets along with a document showing FY 2008 information, the FY 2009 and FY 2010 adopted budgets and the income/expenditures to date for FY 2009. A motion was made by Sue Lowry to approve the Treasurer's Report. The motion was seconded by Tracy Streeter and passed without objection.

Executive Director's Report: David Pope reviewed the contents of the meeting packets and summarized his primary activities since the last meeting. He noted that considerable time was spent preparing for the meeting and drafting many of the materials included in the meeting packets. He deferred comments on those items he has worked on that are also on the agenda for later discussion. He noted that he had monitored the transition of the new administration, as well as changes in Congress and occasionally provided information to our group by e-mail. He also indicated a significant amount of his time had been spent related to the 1944 Flood Control Act (FCA) study, preparing the draft White Paper and the draft Congressional Action Plan. He also noted that two "side meetings" had been arranged for this week while many people are in Billings. One of those is a meeting of Tribes and other interested parties to help prepare for the next meeting of MRRIC, during which the Tribes will make a presentation regarding Tribal issues. The other meeting is related to the Fort Randall hydro peaking issue previously raised in the MoRAST AOP comments last fall. It will involve a discussion of the issues among representatives of MoRAST, the Corps of Engineers and WAPA.

Other New Business: Chairwoman Sexton indicated that the Executive Committee had met and reviewed the Executive Director's Contract. The Committee conceptually recommended that the Contract be renewed, but noted that there may need to be changes due to work load and scope of the next MoRAST Work Plan. For example, she indicated that David Pope is spending more time on MoRAST business than required by the Contract and there have been other changes in circumstances in the last two years. Mary asked for volunteers to work with Mr. Pope to update the Work Plan. She appointed Sue Lowry as the lead person. Other volunteers included Bernie Hoyer (IA), Chris Hunter (MT), Gene Zuerlein (NE) and Elizabeth Wakeman (Flandreau Santee Sioux Tribe). She said others can be included if desired. After receiving input on revisions to the Work Plan, the Executive Committee will negotiate with David Pope for a new contract between MoRAST and Pope Consulting, LLC for David's role as Executive Director and the services to be provided.

David Pope noted that he still has the plaque that was prepared for presentation to former Chairman John Cooper at the last meeting. His extraordinary service to MoRAST was recognized and Jim Riis was asked to hand deliver the plaque to Mr. Cooper on behalf of MoRAST.

Old Business: David Pope reviewed the status of the 1944 FCA "Section 108" study. He noted that Congress had recently authorized such a study for \$25 million at 100% federal expense and provided initial funding of \$2.868 million through the FY09 Omnibus Appropriations Act.

Mr. Pope also summarized the revisions to the draft “White Paper” that provides background information regarding the proposed study of the 1944 FCA requested by MoRAST, that has been in preparation prior to the study being authorized by Congress. An earlier version had been reviewed at the December meeting. A copy of the current version was in the meeting packets.

Mr. Pope noted that the draft White Paper had been revised to include the suggestions from the Dec. 1-2, 2008 MoRAST meeting, which were: 1) Cultural Resources and Tribal issues, such as the impacts from the construction and operation of the reservoir system, 2) downstream issues, such as environmental impacts from the Bank Stabilization and Navigation Project 3) future water needs and development, and 4) a broader geographic scope to include the tributaries. He included the input received from the Great Plains Tribal Chairman’s Association (GPTCA) with only minor wording changes to fit the rest of the document and also included suggestions from Iowa, which helped flesh out downstream issues and study criteria. A copy of the GPTCA issue paper providing input to MoRAST was in the meeting packets.

He also called attention to the report in the meeting packets: “Background Report on Federal Acts and Court Cases that have affected the Development of the Missouri River Basin” prepared by Leland Rolfs, a Topeka, KS attorney, at the request of David Pope and the Executive Committee, and summarized some of the key provisions. This project was done to locate copies of provide historic documents and help better understand the 1944 FCA, and related statutes, especially from a legal perspective after review of case law. Mr. Pope noted that while this was a very limited project, he thinks it has provided useful information.

There was an initial discussion regarding how to proceed to implement the study. Kayla Eckert Uptmor, Chief of Planning for the USACE, Omaha District was asked to provide initial USACE comments regarding the study. She indicated that the USACE does not yet have guidance on how to proceed with the study, so there was not much she can say at this point. It was noted that apparently the Assistant Secretary of Army (CW) has received a letter from key Senators requesting that the study not formally start until October 1, 2009, but others noted that there is some question about the agreement related to that request. She said the USACE would develop a project management plan for the study. There was some discussion about potential input from MoRAST, as well as the public, and external review related to the study.

Presentation on Cultural Resources: The presentation was deferred until the next meeting as the speaker could not attend the meeting due to weather conditions.

Presentation on the BSNP, Fish & Wildlife Mitigation Program: Mike George, USACE Missouri River Recovery Program (MRRP) Manager gave a presentation on the history and funding of Fish & Wildlife Mitigation for the Bank Stabilization and Navigation Program (BSNP). He noted that the BSNP was initiated with an authorization in 1903 and construction continued through 1982. The Mitigation Program was first authorized in 1986 in the States of Iowa, Nebraska, Kansas and Missouri. It was amended in 1989 to expand the acreage allowed to be acquired to 160,000 acres, which is equivalent to about 20% of the habitat lost in the four States. First funded 1992, the Mitigation Program budget for many years was in the \$4 to 6 million range. Since the current MRRP has been operational, the budget has been much larger with \$10 to 22 million spent on land acquisition alone in recent years. He responded to questions regarding the current MRRP, which now includes the Fish & Wildlife Mitigation Program. The MRRP also now includes more recent authorizations allowing work in the upper basin States and has had additional funding. However, the MRRP budget is limited this year to about \$57.8

million, while they need to \$70 million for compliance with the Biological Opinion, so the USACE is considering options. Some additional money may come through the Stimulus program. There were additional questions and discussion, including some about the Intake, MT project that would allow fish passage through a diversion dam on the Yellowstone River. This is a USBR project, but with funding and cooperation through USACE, because of the benefits to recovery of the Pallid Sturgeon. (Mr. George's PowerPoint presentation may be viewed at: <http://mo-rast.org/Meetings/PastMeetings.htm>)

Current conditions and Corps update: Larry Cieslik, USACE, Chief of Missouri River Basin Water Management, Northwest Division, Omaha, NE., provided an update on current water management operations. Current system storage is 47.5 million acre feet (MAF). The runoff forecast may be increased due to high recent runoff. It was noted that we could be above 50 MAF by the end of April. Mr. Cieslik indicated that they were slated to run the March Spring Pulse in recent days but it was canceled due to the downstream rain forecast and concerns about flooding. He noted that their modeling was predicting flows at Kansas City greater than the 71,000 cfs criteria. He further noted that the USACE is reducing releases at Garrison Reservoir due to flooding in the Bismarck area as a result of large snow and rain events. Jody Farhat was introduced as the new Chief of Water Management to replace Larry Cieslik who will retire from his position, effective May 1, 2009. Ms. Farhat was congratulated on her new position. Appreciation was expressed to Mr. Cieslik for his many years of dedicated service and, in particular, for his cooperation with MoRAST and its predecessor organizations.

MRRIC Update: Mary Roth, USACE MRRIC Program Manager, Omaha, NE., gave an update on the status of the Missouri River Recovery Implementation Committee (MRRIC). She reported that Mr. John Thorson has been selected as the new Chairman of MRRIC. Mr. Thorson had recently moved back to Montana. In addition, she also noted that Gail Bingham and Paul D. Morgan of the firm RESOLVE had been selected as facilitators for MRRIC by the U.S. Institute for Environmental Conflict Resolution, all with the consensus support of the committee. Ms. Roth made a PowerPoint presentation summarizing the status of the Committee's recent meetings and activities. Among other things, this has including consideration of the integrated science program and input regarding the purpose and needs statement for the Missouri River Ecosystem Restoration Program study. MRRIC is also reviewing project work plans and other issues related to the Missouri River Recovery Program. She noted that the Committee is currently using a WEBEX system for sharing documents and communications among members. They are working to update the availability of document for the public to be placed on the Missouri River Recovery Program website at www.mrric.org. Mr. Pope indicated that he had voiced support for putting more of the documents being considered by MRRIC on the MRRIC website, as many of them are currently not very accessible to non-members and the public. (Ms. Roth's PowerPoint presentation may be viewed at <http://mo-rast.org/Meetings/PastMeetings.htm>)

MRERP Update: Randy Sellers and Wayne Nelson Stastny provided an update on the Missouri River Ecosystem Restoration Program (MRERP) and the recent Cooperating Agency Team (CAT) meeting. Mr. Sellers noted that the MRERP project development team is working with MRRIC, CAT and the Tribes on the purpose and needs statement for the study. The CAT includes 8 States, 12 Federal agencies and 8 Tribes that have accepted the invitation to participate in this way. The study will be a collaborative process to develop a comprehensive plan for the restoration of the ecosystem and will include issues related to recovery of the endangered species, sustainability, system alterations, ecological form and function and integration of various opportunities to improve the river system for various uses. He noted that the official scoping process would begin about May 1, 2009.

Federal Stimulus bill: Personnel from the USBR, USACE, USGS and WAPA provided comments on funding to be received by their agencies through the American Recovery and Reinvestment Act of 2009 (ARRA). They summarized the authorizations and amount of funding in the ARRA. Several indicated that this is a large new program and in some cases guidance from OMB has not been received and detail for what Missouri River projects will be funded is not yet available.

Gary Campbell, Deputy Regional Director of the Great Plains Region, indicated that USBR will receive \$1 billion for various projects and programs. He noted that Congress specifically set aside some money for specific projects, but that much of the money can be used for various other existing authorized projects. He summarized the criteria, transparency and accountability related to the implementation of these projects. He noted the USBR will be looking to fund “shovel ready” projects where the project’s sponsor will have the capacity to move quickly. He noted there are a number of rural water projects in the Great Plains region that may receive funding through this program along with other types of projects. Mr. Campbell also provided the USBR report and updated the group on the status of several other on-going issues, including USBR projects affected by the recent flooding. He also provided comments about the status of the project at Intake, Montana on the Yellowstone River which is being implemented in concert with the USACE. They are currently considering ways to move the project forward as quickly as possible and determining whether a regular EIS will be completed or if an environmental assessment will be adequate.

Bob Swanson, Director of the USGS Nebraska Water Science Center, reported that the USGS is scheduled to receive \$140 million through the AARA. They currently expect to use much of this money to replace outdated equipment including a substantial amount related to the streamgaging program.

Nick Stas, Environmental Manager, Upper Great Plains Region, WAPA, reported that AARA included authority for WAPA to borrow \$3.25 billion for projects to support renewable energy, such as transmission lines to move wind energy, etc. He also noted that WAPA is doing a programmatic EIS related to wind energy and expects a Record of Decision by 2010.

Henry Maddux, USFWS Program Manager, Denver, CO indicated that a priority list is being developed for AARA projects on National Wildlife Refuges that will include road improvements, O&M backlog, new visitor centers and a special program for youth.

Kayla Eckert Uptmor, USACE Chief of Planning, Omaha District indicated that the AARA including \$4.6 billion for the Corps of Engineers, which essentially doubles the USACE budget compared to 2008. The major portion of this will be for construction projects and operation and maintenance, although there will be some funds for investigations and other matters. She indicated that the Corps is currently working with OMB to refine its plan which will be placed on the www.recovery.gov website.

There was also some additional discussion among those present regarding the use of some of the AARA money by States and Tribes.

GAO Report: Jay Spaan of the GAO spoke to the group by speaker phone. He summarized the January 2009 report issued by the GAO regarding Missouri River Navigation. A copy of the report was in the meeting packets. Mr. Span indicated that the GAO role is to provide an independent review of certain governmental functions. He reviewed the report and summarized the results related to the amount of goods shipped by navigation for each of the four downstream States over the period studied.

Continued Business Meeting:

1944 FCA Study: There was continued discussion regarding the implementation of the 1944 FCA study. There was recognition of the need to provide timely input to the USACE regarding purpose, scope and the issues to be considered by the study. Mike Hayden of Kansas passed out a draft letter for consideration of the board. The letter would potentially be sent to the Assistant Secretary of the Army (CW), regarding potential MoRAST recommendations about how to proceed with the study, especially related to implementation and process issues. There was some discussion about whether the study would only review the existing projects and authorized purposes or also consider future needs. It was noted that the original Pick-Sloan Plan was essentially a plan for the development of water resources in the basin. Ron Oldman indicated appreciation for MoRAST including issues of interest to the Tribes.

A motion was made by Mike Hayden and seconded by Sue Lowry to circulate the draft letter to the States and Tribes for comment after the meeting and to authorize the Executive Committee to consider the input and approve a revised letter to send by about May 1, 2009. There was additional discussion regarding the rationale for some of the provisions of the draft letter. It was suggested that some narrative be provided to better explain the reason for the various provisions in the draft, when the letter is circulated after the meeting, and Mr. Hayden said Kansas would provide that information to David Pope, so he could include it when the draft letter is circulated for comment. The motion passed with no negative votes. Bernie Hoyer abstained.

In addition, each State and Tribe was asked to develop a list of questions or issues it would like addressed by the study for consideration at the June MoRAST meeting to be held in the Bismarck, ND area. Chairwoman Sexton asked the MoRAST Water Management Committee and Fish and Wildlife Committees to work together as a Technical Committee to develop this list in conjunction with their individual States and Tribes. Each of these committees can include Tribal members.

White Paper: Additional discussion occurred regarding the content of the draft White Paper. Tracy Streeter made a motion to adopt the draft White Paper. The motion was seconded by Chris Hunter and passed with no negative votes. Bernie Hoyer abstained.

Congressional Action Plan: David Pope reviewed the draft Congressional Action Plan with the group. This is a revision to the version considered at the December meeting. A copy was in the meeting packets. Mr. Pope noted that it included five items to support, including two new items consistent with those suggested by GPTCA: Funding for travel to MRRIC, MRRP and other related meetings and increased funding for protection of cultural resources. Copies of two related resolutions of the GPTCA were in the meeting packets. A motion was made to approve the draft Congressional Action Plan by Mike Hayden and seconded by Tracy Streeter. The motion passed with no negative votes. Bernie Hoyer abstained.

Clarification of Minutes: David Pope indicated that some additional suggested corrections had been provided to him by Nick Stas of WAPA during the meeting. These clarifications were in the Federal Reports section of the minutes of the December 2008 meeting. There was consensus agreement to make these additional corrections to the minutes that were approved earlier in the meeting.

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

Kansas – Tracy Streeter reported on the Kansas legislative session and noted that the budget would be difficult this year. He summarized issues related to purchase of water storage by the State in Federal Reservoirs and the status of reallocation of storage space at Wilson and Kanopolis Reservoirs. He also noted the serious problems that degradation is causing on both the Missouri River and the Kansas Rivers upstream from the confluence.

USFWS – Wayne Nelson Stastny reminded the group that everyone is welcome to attend the MRNRC Missouri River conference social that begins at 6:00 p.m. this evening.

USGS – John Kilpatrick, Director, Montana Water Science Center, reported on a time of travel study on the Yellowstone River. He also noted there were several joint activities underway related to water quality/aquatic resources and energy development in river basins shared by Montana and Wyoming.

Wyoming – Jody Pring indicated that the Pathfinder Reservoir project passed the legislative session which will allow Wyoming's obligations on the Platte River to be satisfied.

Nebraska – Brian Dunnigan reported on the budget challenges in Nebraska. He also noted that a non-binding arbitration hearing was just finished related to the Republican River Compact dispute, and that a decision is expected in June. He noted that the DNR continues to work with the Natural Resources Districts in Nebraska to develop integrated management plans for management of surface water and groundwater.

WAPA – Nick Stas indicated that WAPA had now completed a wind/hydro integration study.

South Dakota – Jim Riis indicated that the additional runoff was good news for Oahe Reservoir and that he hoped all three big reservoirs can be held steady to rising this spring, although he noted that the USACE agreed with the MoRAST recommendation in its AOP to favor Garrison Reservoir this year. He noted that South Dakota is pleased that the 1944 FCA study has been authorized and funded.

Montana – Chris Hunter reported that they are working with The Nature Conservancy on another potential project on the Yellowstone River that might open up several more miles of river upstream of the Intake, MT project. Mary Sexton reported on the legislative session and noted that they were continuing to work on Indian Water Right settlements for the Blackfeet, Fort Belknap and Crow Tribes.

Flandreau Santee Sioux Tribe – Elizabeth Wakeman thanked David Pope for responding to her questions and thanked MoRAST for its support of Tribal issues. She indicated that she will be discussing several of these matters with the GPTCA.

Northern Arapahoe Tribe – Ron Oldman expressed appreciation to MoRAST for including the Tribes.

USGS – 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.

Future MoRAST meetings: The dates for the next MoRAST meeting were set for June 16-17, 2009 in the Bismarck, ND area. Details will be worked out in conjunction with the meeting hosts.

Due to travel restrictions and costs, it was suggested that consideration be given to holding a meeting in August by conference call and to possibly use computer technology to view documents. One option mentioned was "Glance.net" where the host can display documents on a computer screen and others can use an internet link to view the documents on their computer. There are also other options, such as "Net Meeting". It was noted that if more extensive discussions or other potential action is needed related to the 1944 FCA study, a face to face meeting will be held, if necessary. One potential date is August 18-19, 2009, but other dates will be considered.

The meeting was adjourned at approximately at 4:30 p.m.

Respectfully submitted,

/s

Tracy Streeter,
Secretary

Note: These minutes were approved at June 16-17, 2009 MoRAST Meeting