



# MISSOURI RIVER NEWS

Issue 2

May 2008

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## WELCOME TO THE MORAST NEWSLETTER:

### *MISSOURI RIVER NEWS*

The *Missouri River News* is the newsletter of the Missouri River Association of States and Tribes (MoRAST). More detail about MoRAST, its purpose, structure and programs can be found on the MoRAST web site at: [www.mo-rast.org](http://www.mo-rast.org), including background information found in the first issue of the *Missouri River News* at: <http://www.mo-rast.org/Newsletters/10-07.pdf>. The *News* is pub-

lished primarily as an electronic newsletter to take advantage of current technology and minimize costs, but a limited distribution can be made to those without email, upon request. The purpose of the *News* is to provide articles of timely interest about the activities of MoRAST and other information of interest related to water and natural resources management in the Missouri River Basin.

## UPCOMING MORAST MEETING IN GREAT FALLS, MONTANA MAY 21-22, 2008

The Missouri River Association of States and Tribes will meet in Great Falls, Montana on May 21 and 22, 2008, at the office of the Montana Fish, Wildlife and Parks Department, located at 4600 Giant Springs Rd in Great Falls. It will start at 8:30 AM MDT on May 21st, continue until 5 PM, resume on May 22nd at 8:30 AM and adjourn at about 11 AM. See [www.mo-rast.org](http://www.mo-rast.org) for more details.

The meeting will include a MoRAST business meeting and various presentations from the U. S. Army Corps of Engineers and/or U.S. Fish and Wildlife Service regarding current conditions and issues in the Basin, status of

the proposed Missouri River Recovery Implementation Committee (MRRIC) Draft Charter, the Missouri River Recovery Program, the Environmental Recovery Program Study (MRERP) and a special visit by Witt Anderson, USACE Northwest Division Program Director. The meeting will also include presentations about water management and fish and wildlife issues in the Columbia River Basin, the St. Mary's project in Montana and the Milltown Dam (Superfund site) on the Clark Fork River near Missoula, Montana, as well as reports from State, Tribal and Federal Agencies and an opportunity for public comment.

## MORAST TO MEET IN CHEYENNE, WYOMING, AUGUST 26-28, 2008

The next MoRAST meeting will be held the afternoon of August 27th and the morning of the 28th in Cheyenne, Wyoming. MoRAST will also co-sponsor a USGS "Cooperators Workshop", from around noon on August 26th to noon on the 27th at the same location with the USGS and the Interstate Council on Water Policy.

## MORAST PAST MEETING SUMMARIES

### December 11-12, 2007

MoRAST and others met in Pierre, South Dakota on December, 11-12, 2007. In addition to the business meeting and administrative items, the board received a legal and legislative update from Chairman Cooper and David Pope summarizing the status of work on the Water Resources Development Act (WRDA) of 2007, which was passed effective November 8, 2007 after Congress overrode the President's veto. It contains several important provisions related to the Missouri River, including: a) authorization of recovery and mitigation work to occur throughout the river system, instead of just downstream, b) the authorization of the Missouri River Recovery Implementation Committee (MRRIC) and a study of recovery, mitigation and restoration needs, and c) allows the Corps to assist the Bureau of Reclamation with the Intake, Montana fish passage project on the Yellowstone River. Extensive work on the WRDA issue by Dave Cookson of the Nebraska Attorney General's Office, and several members of the Congressional delegation from the Basin provided important support.

The board also heard a series of pres-

entations ranging from invasive species on the Missouri River and Salt Cedar to climate change and an update from NOAA-NWS. Also included were updates from the U. S. Army Corps of Engineers on current hydrological conditions in the Basin, the process to develop implementation guidance for WRDA, the status of the MRRIC planning process, Missouri River Recovery Program activities and river degradation issues. A joint report was received from the Corps and U.S. Fish and Wildlife Service about the Missouri River Ecosystem Restoration Plan getting underway in the Basin. A copy of the minutes and the informative Power Point presentations used at the meeting can be found at: <http://www.mo-rast.org/Meetings/PastMeetings.htm>

### February 25, 2008

MoRAST met in Nebraska City, Nebraska on February 25, 2008, just prior to the Missouri River Conference, sponsored by the Missouri River Natural Resources Committee. In addition to a business meeting, receiving a number of updates about current activities and issues, and hearing from several guest speakers, the primary focus of the meeting was to

discuss the operation of the Missouri River Mainstem Reservoir System pursuant to the 1944 Flood Control Act (FCA), which was authorized as part of the Pick-Sloan Program. In 2007, Governor Rounds of South Dakota had called for a review of the 1944 FCA and exchanged letters with Assistant Secretary of the Army (CW) John Paul Woodley and others.

The board reviewed the information provided by South Dakota and heard various other presentations regarding the matter. After significant consideration, the board took action to request that the U. S. Army Corps of Engineers initiate a study to determine whether changes are needed to the congressionally authorized purposes for the Missouri River Mainstem Reservoir System in order to best meet the contemporary needs of the basin and to begin scoping out the extent of such a study. The board's congressional agenda also now includes a request for authorization and/or funding of such a study. The action did not request any particular use to be de-authorized, as it is recognized that an objective study is needed to determine what, if any, changes are needed to the 1944 FCA.

## CHAIRMAN'S COLUMN

By John Cooper, South Dakota

I hope this copy of the MoRAST Newsletter finds you and your family outside enjoying the beauty of a warm spring day. The changing of the seasons after a protracted winter always gives me pause for some thoughts. I'd like to share some of those thoughts with you coming from the perspective of a father, grandfather and Chairman of MoRAST.

It has been my privilege in life to have been able to live and work on and alongside the Missouri River Corridor for almost 36 years. My family and I have lived in the Dakotas since 1973 and I have spent that time as a Senior Resident Law Enforcement Agent with the U.S. Fish & Wildlife Service (22 years); as Secretary of the South Dakota Department of Game, Fish & Parks (12 years); and currently as South Dakota Governor Round's Missouri River Coordinator and Policy Advisor. All of those positions required substantial time on the Missouri River and working on its major management issues. In addition, I am a devoted angler, hunter, photographer and camper, all of which have lead to my spending a great deal of personal time exploring its waters with family and friends.

The Missouri River has become near and dear to my heart and to my lifestyle. It has also become my work priority and it occupies a huge part of my daily personal thoughts and concerns. Frankly, I'd be less than honest with you if I told you I was happy about how this River is being operated and treated in light of what we know are now the contemporary



needs of the whole Missouri River Basin. Let me try and explain why I'm frustrated and unhappy about how we continue to treat one of our Nations great Rivers.

As Chairman of MoRAST for the past 18 months, I have traveled to meetings, seminars, court hearings, appointments with U.S. Army Corps of Engineers officials, visited with business owners, farmers, County Commissioners, Governors, Conservation Districts, Tribal Chairmen, Congressional Representatives and their staffs and, perhaps most importantly, individual people who work and play along the River. From all these contacts, it has become abundantly clear to me that there is overwhelming interest in working toward a more sustainable management of the Missouri River System than we presently have under the 1944 Flood Control Act (FCA). The most frustration seems to come from a belief that the

outmoded visions and practices prescribed in the 1944 FCA is entrenched in the Corps and will never change until and unless Congress steps in and takes a fresh look at the current needs of the Basin. As I said, I share that frustration, but I have learned that we need to quit pointing fingers at the Corps and, instead, look at what we collectively can do to request Congress' help in seeking some common sense solutions, which includes the help of the Corps as fellow stakeholders in the River Corridor. Basically, they need to keep operating the river, but in a much more modern fashion. This is especially true in these extended times of severe drought in the upper basin. Bottom line is: The 1944 Flood Control Act has locked all of us, including the Corps, into a management scheme that is outdated and does not respond to modern day beneficial uses for the entire Basin - we need change and Congress is where that change will have to occur.

During his tenure as President of the United States, not only did Thomas Jefferson call upon Lewis and Clark in 1804 to explore the entire Missouri River Basin and it's possibilities for a variety of uses, but he also gave us one of the wisest quotes of any sitting President: He said, "I am certainly not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new

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**Chairman's Column** (Continued from page 3)

truths are discovered and manners and opinions change,....institutions must advance also to keep pace with the times."

Jefferson's quote speaks volumes to the situation we find ourselves in today with River management and water conservation. The Flood Control Act of 1944 was cobbled together by the Bureau of Reclamation and the U.S Army Corps of Engineers in what some reporters of the time called "a shameless, loveless shotgun wedding." Whatever it was called, the FCA attempted to be all things to all people and it has not lived up to its original promises or forecasts that were presented to Congress in 1944. Its shortcomings are most evident from the economic perspective related to the failures of both navigation in the lower basin and irrigation in the upper basin. Couple that with a continuing decline in River health leading to increased sediment deposition, channel bed degradation, minimal water conservation storage measures, loss of power generating capacities, and significant

negative impacts to fish and wildlife species and it all adds up to the realization that there is no way we can sustain the current management of the River during extended drought periods without change.

Communities, especially tribal communities, have been threatened with the loss of municipal water supplies. Historically low water levels in Fort Peck, Garrison and Oahe Reservoirs now threaten fish and wildlife populations and a growing outdoor recreation industry and continuing drought in the upper basin holds little promise for runoff and water surcharge in these ailing reservoirs. Yet, under the 1944 FCA, we continue to run substantial amounts of water for a failing navigation industry below Gavins Point Dam that hauled only 200 thousand tons of materials in 2007.

At our MoRAST meeting at Nebraska City in February, our membership took to heart what we have been hearing from the people we have met with over the past year. We voted to request the U.S. Army Corps of Engineers to initiate a

study under the provisions of Section 216 of the 1970 Flood Control Act to determine whether changes are needed to the congressionally authorized purposes of the 1944 FCA in order to best meet the contemporary needs of the Basin. In our discussions leading up to that vote, we thoroughly discussed the need for such a study. We also reviewed the possibility of engaging Congress for a study similar in scope to that which Congress authorized for the Upper Mississippi River Basin if the Section 216 study does not meet the needs of the MoRAST member states and tribes.

In my opinion, we can't just keep moving along, pushing the status quo, especially in these times of extended drought and meager water supply, and watch this valuable resource become just a conveyance ditch for water. Making informed changes begins with research and objective knowledge. The time for a comprehensive study and better collaboration in fixing a broken management system has come. Our kids and grandkids deserve nothing less.

## REQUEST FOR MISSOURI RIVER STUDY

As noted in the summary of the February 25, 2008 MoRAST meeting and the Chairman's Column, the board took action to request that the U. S. Army Corps of Engineers initiate a study to determine whether changes are needed to the congressional authorized purposes for the Missouri River Mainstem Reservoir System. This action was supported by all the directors present from seven different states. Section 216 of the 1970

Flood Control Act provides authority for the Corps to reevaluate existing projects if the physical, economic or environmental conditions have changed since the project's completion. The Missouri River Mainstem Reservoir System is operated in accordance with the 1944 Flood Control Act (FCA) for various authorized purposes including flood control, water supply, irrigation, hydropower, navigation, recreation and fish and

wildlife. The following information relates to the basis for the study request.

Some of the originally authorized purposes, such as flood control and hydropower, have provided substantial benefits as expected, while other purposes, such as irrigation and navigation have not come anywhere close to the expectations that existed

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**Missouri River Study** *(Continued from page 4)*

when the project was authorized. As multi-year droughts have occurred, the system is hard pressed to deliver other project benefits such as municipal and industrial water supply and recreation use. In addition, extended and continuing drought and low reservoir water levels caused by current system operation has caused serious impacts to hydropower production. The Western Area Power Administration (WAPA), which markets power to wholesale customers in the basin, has had its ability to meet firm power demands severely impacted due to loss of generating efficiency from continuing low water levels. This has resulted in a 37.3 % increase in rates to wholesale customers since January, 2004 to cover the cost of purchasing power from the open market.

While the construction of the reservoir system and other works have

resulted in tremendous project benefits for many authorized purposes, it has also created substantial environmental impacts, such as a large loss of wetlands and habitat for a number of native species. 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 and are at risk for future listings. In addition, the need for protection of historical and cultural resources is now well documented. In short, major changes have occurred in the physical, economic and environmental conditions since the project was authorized over 60 years ago by the 1944 FCA.

While Section 216 provides one approach to study the system operations, the Corps has also noted that due to the scope and breadth of this matter, a new authorization for a comprehensive analysis from Congress may be necessary. Currently,

the Corps has indicated that no funds have been provided for a Section 216 Study and it has no plans to initiate such a study without direction from Congress.

As a result, action will be needed by Congress if either a Section 216 Study or a comprehensive analysis is to be conducted to determine whether changes are needed to the authorized purposes in the 1944 FCA for the operation of Missouri River Reservoir System in order to best meet the contemporary needs of the Missouri River Basin. An objective analysis could lead to the development of a new comprehensive plan to best meet the contemporary needs of the basin. There may well be an opportunity to improve the operations of the system for the benefit of both upstream and downstream interests for the various purposes that continue to be important to the Missouri River Basin and nation.

## MRRIC PLANNING PROCESS COMPLETES DRAFT CHARTER – MARK RATH, MEMBER DRAFTING COMMITTEE

Management of the Missouri River Mainstem System by the US Army Corps of Engineers (USACE) has always been complex due to competing interests and often times limited water availability. The USACE's management of the system is guided by a document called the Missouri River Mainstem Reservoir System Master Water Control Manual (Master Manual). The Master Manual has been periodically updated since the mainstem reservoirs were authorized more than 60 years ago. In the 1980's and 90's management of the

system became even more complex with the listing of two bird species, the interior least tern and piping plover, and a fish species, the pallid sturgeon, as threatened or endangered species under the Endangered Species Act.

The most recent revision of the Master Manual began in the early 1990's when the USACE began a 14 year long task of updating the Master Manual to reflect contemporary needs including consideration for threatened or endangered species.

In 2004 following a series of federal lawsuits culminating with a multi-jurisdictional court hearing, a ruling by Federal Circuit Court Judge Paul A. Magnuson resulted in a new Master Manual being issued. This new Master Manual contained requirements that recovery of these species should include an adaptive management process. During the Master Manual revision process, the USACE in consultation with the US Fish and Wildlife Service proposed forming a Missouri River Recovery Implementa-

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### MRRIC Planning (Continued from page 5)

tion Committee (MRRIC) to help address the threatened or endangered species issues on the Missouri River. The MRRIC would make use of this adaptive management concept to help develop recommendations to the USACE for the threatened or endangered species recovery.

In the spring of 2007, through the effort of several Federal agencies and involvement by the U.S. Institute for Environmental Conflict Resolution a Missouri River Recovery Planning Group was assembled to develop a consensus-based initial Charter for MRRIC. The intent of the Charter is to direct how the MRRIC will be formed and how it will function. The planning group, made up of a Drafting Team and Review Panel, was selected and began drafting the charter for MRRIC. Members on the team represented multiple stakeholder interests, the basin Indian tribes and basin states. Federal agencies participated as the Federal Working Group which provided information, technical support and the federal agencies' perspective on the various issues. The Federal Working Group provided information to the group, but did not formally participate in the consensus process to develop the charter.

There were a total of nine separate multiple day meetings, numerous drafting team conference calls, and several sub-committee meetings and conference calls and a month long public comment period all occurring between March 2007 and the end of January 2008. The first four meetings involved interviewing and selecting a facilitation team and developing the

drafting team's operating procedures. A facilitation team comprised of Ruth Siguenza, Steve Miller, Karen Amen, Lisa Berens and Martha Gilliland were ultimately chosen to facilitate the drafting process.

The drafting team formally adopted its operating principals at the fourth meeting in Omaha and serious work began on developing the draft charter. Over the next several months meetings were held in Billings, Minneapolis, Kansas City, Denver and Omaha. There were a number of principles that came forward throughout the drafting process. One was the principle that all substantive issues needed to be resolved by consensus of the members. Another was a quorum of the members needed to be present before a substantive issue could be considered. These same principles carried forward and made their way into the charter.

A number of contentious issues were considered and debated throughout the process. Some of these included membership affiliation, government participation, membership numbers, scope and purpose of the committee, numerical balance in membership from the various interests and geographical balance in membership from the various interests.

The drafting team completed and submitted a proposed charter to the Assistant Secretary of the Army John Paul Woodley following their January 23-24 meeting in Omaha. The proposed charter specifies there would be representatives on the MRRIC from 16 stakeholder interest categories, 28 federally recognized basin

Indian tribes and eight basin states. The Water Resources Development Act (WRDA) of 2007 authorized the creation of the committee and required representation of federal agencies, states, tribes and stakeholders on the committee. USACE and the US Fish and Wildlife Service have been included in the proposed as lead agencies and the Bureau of Reclamation, Natural Resource Conservation Service, Environmental Protection Agency, Western Area Power Administration, United States Geological Survey, Maritime Administration, the National Park Service, and any other agency designated by the Secretary of the Army as participating agencies. A copy of the proposed MRRIC Charter can be found at <http://missouririver.ecr.gov/?link=417>.

Assistant Secretary Woodley is in the process of reviewing and will make the determination of whether or not to accept the Charter and formally establish MRRIC as proposed. WRDA2007 requires MRRIC be established by May 9, 2008. In addition, the USACE is in the process of conducting consultation sessions with the Indian tribes in the Basin. If the Secretary accepts the Charter establishing MRRIC, the USACE will then request applications from the basin stakeholder groups to fill the available committee slots assigned to the stakeholder interest categories. Letters will also be sent at that time to each of the eight basin state governors and the 28 basin Indian tribal chairmen requesting that they appoint one member and one alternate to represent each of their states or tribes on the MRRIC.



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The Missouri River Association of States and Tribes (MoRAST) is a regional interstate organization formed by joint resolution of the Governors of Wyoming, Montana, North Dakota, South Dakota, Nebraska, Iowa and Kansas and the Mni Sose Intertribal Water Rights Coalition. It was formed to help resolve issues of concern to the basin states and tribes, to serve as a forum to foster communication and information exchange among the member states, tribes, federal agencies and others, and to facilitate the management of the natural resources of the Missouri River Basin, including water resources and fish and wildlife, while considering the impacts to the economic, historical, cultural, and social resources.



**A group of MoRAST participants at dinner: clockwise from left front; Chairman John Cooper, David Barfield of Kansas, Mark Rath, Garland Erbele, and Geno Adams all of South Dakota**



**From left; Jeff Hagener, John Tubbs, Mike Ruggles and Mary Sexton of Montana, Mike Hayden of Kansas and Rich Leopold of Iowa**



**From left; David Barfield of Kansas, Chairman Cooper and Gina Star**

## UPCOMING EVENTS

May 21-22

MoRAST Meeting

Great Falls, MT

June 10-12

Winters Centennial - [http://uttoncenter.unm.edu/winters\\_conference.html](http://uttoncenter.unm.edu/winters_conference.html)

Santa Ana Pueblo, NM

August 26-27

USGS Cooperators Meeting

Cheyenne, WY

August 27-28

MoRAST Meeting

Cheyenne, WY