

## Minutes

### Missouri River Association of States and Tribes (MoRAST)

Rapid City, South Dakota

December 1 & 2, 2008

MoRAST Chairwoman Mary Sexton called the meeting to order around 2:00 p.m. on December 1, 2008, and welcomed everyone to the meeting held at the Ramkota Hotel in Rapid City, South Dakota. Introductions were made for all in attendance.

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

MONTANA: Mary Sexton, Chris Hunter and Mike Ruggles

WYOMING: Sue Lowry

NORTH DAKOTA: Todd Sando and Terry Steinwand

SOUTH DAKOTA: Jeff Vonk, Garland Erbele and Mark Rath

NEBRASKA: Brian Dunnigan and Kirk Nelson

IOWA: Bernie Hoyer and Harold Hommes

KANSAS: Mike Hayden, Tracy Streeter and Steve Adams

YANKTON SIOUX TRIBE: Chairman Robert Cournoyer and Faith Spotted Eagle

WINNEBAGO TRIBE OF NEBRASKA: Darwin Snyder and Kenn Mallory



NORTHERN ARAPAHO TRIBE: Dr. Kate Vandemoer



CHEYENNE RIVER SIOUX TRIBE: Vice Chairman Bob Walters

FLANDREAU SANTEE SIOUX TRIBE: Elizabeth Wakeman

OGLALA SIOUX TRIBE: Mario Gonzalez

THREE AFFILIATED TRIBES: Chairman Marcus Wells, Jr., Roger Whiteowl

ROSEBUD SIOUX TRIBE: President Rodney Bordeaux

CROW CREEK SIOUX TRIBE: Chairman Brandon J. Sazue, Sr.

STANDING ROCK SIOUX TRIBE: Chairman Ron His Horse is Thunder, Vice Chairwoman Avis Little Eagle, Everett Iron Eyes and Chase Iron Eyes

LOWER BRULE SIOUX TRIBE: Chairman Michael Jandreau

STAFF: David Pope, MoRAST Executive Director

**Federal Agencies:** USFWS: Wayne Nelson-Stastny, Yankton, SD and Mike Olson, Bismarck, ND; WAPA: Nick Stas, Billings, MT; USACE: Larry Cieslik, Rose Hargrave and Mary Roth, Northwest Division, Omaha, NE; Joel Ames and Teresa Reinig, Omaha District, Omaha, NE; USGS: Mark Anderson, Rapid City, SD; BIA: Marilyn Bercier, Aberdeen, SD and Douglas Davis, Montana; and NPS: Wayne Werkmeister, O'Neill, NE.

**Others:** Jesse Ewing, Senator John Thune's Office; Rapid City, SD; Rick Hanson, Rep. Stephanie Herseth Sandlin's office, Rapid City, SD; Dru Buntin, Missouri Dept. of Natural Resources, Jefferson City, MO; A. Gay Kingman, Great Plains Tribal Chairman's Association, Rapid City, SD; Daphne Richards-Cook, Alliance of Tribal Tourism Advocates, Rapid City, SD, and Rebecca Kidder, Rapid City, South Dakota.

**Opening comments:** Chairwoman Sexton made brief comments and indicated that she hoped this meeting would move things forward in regard to the unique opportunity to improve

relationships between the States and Tribes in working on issues of common concern. She called on Ron His Horse Is Thunder, Chairman of Standing Rock Sioux Tribe and also Chairman of the Great Plains Tribal Chairman's Association (GPTCA), for opening comments. Chairman His Horse Is Thunder indicated that many of the Tribes had held a pre-meeting to discuss issues on the agenda for this meeting, especially as related to Tribal participation in MoRAST. He said they recognized the potential benefits of participation, had ideas in terms of how to strengthen Tribal involvement and looked forward to discussions to see if we can come up with something acceptable to the States and Tribes. Chairwoman Sexton also called on **Dr. Kate Vandemoer as a representative of the Montana-Wyoming Tribal Leaders Council** for opening comments. Dr. Vandemoer indicated she was at the meeting representing Ron Oldman of the Northern Arapaho Tribe who had a conflict and could not attend this meeting. **She indicated that she was also a member of the MRRIC and was very interested in Missouri River issues.** She said she looked forward to the discussions and hoped everyone could think "outside the box" to find solutions.

### **Business Meeting:**

**Agenda** - Chairwoman Sexton summarized the draft agenda for the meeting which was previously distributed and was in the meeting packets.

**Minutes** – The draft minutes were previously distributed and were in the meeting packets. Terry Steinwand suggested two minor corrections on page 9 under the North Dakota Report: Lake Sacagawea should be spelled "Sakakawea" and "NE" should be replaced "ND." With that Terry Steinwand moved for approval of the draft minutes with these corrections for the meeting held August 27-28, 2008, in Cheyenne, Wyoming. Motion was seconded by Sue Lowry and passed without objection.

**Treasurer's Report** - The report was presented by Kirk Nelson, MoRAST Treasurer. Mr. Nelson indicated that a copy of the Treasurer's Report was in the meeting packets. He also noted that David had included in the packet a sheet showing the FY 09 and FY 10 adopted budgets and the FY 08 actual income and expenditures as of June 30, 2008. Mr. Nelson summarized the report of expenditures and account balances as of December 1, 2008, as shown on the written report. He noted that all state dues had been received for the current fiscal year except for the State of Iowa and that he understood they should be received at any time. He indicated that expenditures since the last report of August 27, 2008, were \$43,409.54 which leaves a balance of \$266,735. Sue Lowry indicated that Wyoming starts preparing its FY 11 and FY 12 budgets in the summer of 2009 and would appreciate MoRAST developing a proposed budget for those years within that time frame. Mr. Nelson indicated that currently the MoRAST check book is maintained by only one person (the Treasurer) and noted that some organizations use an outside community trust or other entity to maintain funds, pay bills, etc. It was suggested that Kirk pursue this and bring ideas back for further consideration by the Board. A motion was made by Todd Sando to approve the Treasurer's Report. The motion was seconded by Sue Lowry and passed without objection.

**Executive Director's Report** - Mr. Pope summarized the content of the packets for the Board and provided a summary of recent MoRAST activities. He indicated it had been a busy

period since the last meeting, involving significant travel to meetings of the MRNRC in Iowa, the MRRIC and National Academies Sediment Committee meetings, both in St. Louis, the Missouri River Basin Interagency Roundtable meeting in Omaha with the Executive Committee and the Annual Meeting of the Interstate Council on Water Policy in California. He noted considerable time was spent making preparations for this MoRAST meeting and that he had coordinated arrangements with GPTCA and the Montana-Wyoming Tribal Leaders Council. He also noted that he had made an effort to reach out to these organizations to enhance our working relationship. The MoRAST comment letter to the USACE regarding the draft Annual Operating Plan (AOP) was finalized in late November. Mr. Pope also indicated he spent considerable time on the draft "White Paper" related to the proposed study of the 1944 FCA and the draft Congressional Plan of Action, both of which are on the agenda for this meeting.

**Other Agenda Items:**

**USACE Update and Current Conditions** - Larry Cieslik, Deputy Director of Programs and Chief of Missouri River Basin Water Management, Northwest Division, Omaha, NE., provided an update on current hydrologic conditions in the basin and the status of reservoir operations. He indicated that for the first year since 1999, we had average or above runoff at 104% of normal or 26.3 million acre feet (MAF.) In addition, large runoff in the lower basin resulted in lower releases from the reservoirs, while still meeting navigation targets this summer. As a result, there have been significant increases in pool levels, with current system storage at 44.8 MAF compared to 37 MAF last year. Mr. Cieslik also noted that the draft AOP for 2008-2009 was released in late September and public meetings were held. A final AOP will be adopted in December after the public comments are evaluated. Based upon the recommendations by MoRAST, the Corps included in the draft AOP criteria to favor Garrison Reservoir through intra-system balancing of the upper three reservoirs. He indicated that based upon current conditions, it is anticipated that reservoir storage will be over 40 MAF next year, which will result in both a March and May spring pulse. He noted that the Corps had received feedback from the State of Missouri requesting suspension the spring pulse due to potential flooding concerns, since some levees damaged by flooding had not yet been repaired. He said the Corps is currently conducting an analysis of levee status. Pending the completion of a risk analysis, he indicated the Corps will likely follow the technical criteria in the Master Manual. The May pulse would be at 10 to 16 thousand CFS.

Mark Rath, who led the MoRAST AOP Technical Committee, noted that the Committee met with Larry's staff and appreciated the information provided to the Committee. He summarized the Committees recommendations, including those related to Garrison Reservoir. He also noted that the committee planned to further consider the hydro power peaking issue and instream flow needs below Fort Randall Reservoir with the Corps and WAPA.

**MRRIC Status** – Mary Roth, USACE, Northwest Division, Omaha, NE, made a PowerPoint presentation summarizing the current status of the Missouri River Recovery Implementation Committee (MRRIC) that has now been formally established by the approval of the Charter and Implementation Guidance by the Assistant Secretary of the Army (CW.) The Charter was based upon the work of a diverse group of basin stakeholders, States, Tribes and Federal agencies this last year or so. She indicated MRRIC will provide consensus based recommendations to the

Corps and other agencies regarding Missouri River Recovery Issues. She noted that MRBA and MoRAST had been helpful in getting the WRDA Section 5018 enacted. She noted that the committee has now been established to include 28 stakeholders, 8 States and 18 Tribes that have appointed a member, as well as 14 Federal agencies making a total of 68 members, if everyone shows up. The first meeting of the committee was held September 29 through October 1, 2008, in the St. Louis area. She noted the meeting was facilitated by the U.S. Institute for Conflict Resolution who will continue to do so until a third party facilitation team is selected and additional process issues are considered. She noted there is still concern about the WRDA provision that prohibits Federal reimbursement of travel expenses, especially for Tribes and some stakeholders. The first meeting included presentations of background information and considerable discussion about committee structure and process issues. (Her PowerPoint presentation may be viewed at: <http://mo-rast.org/Meetings/PastMeetings.htm>.)

**MoRAST Request for Study of 1944 Flood Control Act (FCA)** – Mr. Pope summarized the current status of the study and called the Board’s attention to a draft “White Paper” he and others from MoRAST had prepared in response to the request from the Board during the last meeting (copy in the meeting packets). The primary purpose of the White Paper was to provide background information and a foundation for the study request. Mr. Pope indicated that, in essence, it would help MoRAST focus the nature of its interest in the study and should help better prepare us to articulate the need for the study and requested scope with members of Congress and others. He indicated that Garland Erbele had furnished some background information and that Sue Lowry developed the first draft of the White Paper largely based on existing background documents, such as those furnished by Garland. Sue indicated that the paper was generally organized under three topics (a) environmental considerations, (b) water issues and (c) economics. David indicated that he added an executive summary, updated some of the background information and added paragraphs related to action needed and the scope of review. He said one of the questions was how to define the focus and scope of the requested study. For example, should it largely focus on the projects on the main stem of the Missouri River or consider basin wide issues, such as the Bank Stabilization and Navigation Project (BSNP) and tributary projects operated by the Bureau of Reclamation (USBR), since both the USACE and the USBR are major players in the Pick Sloan Program. David also noted that there is a limited amount of information in the draft White Paper about Tribal issues and much more could be included.

**Dr. Vandemoer indicated that she thought future development and Tribal rights should be included.** Bernie Hoyer said Iowa was on record as opposing the study. However, he did provide several comments about the draft White Paper. He noted that an attorney from one of the Iowa agencies reviewed the legal cases cited and thought they were inadequate to describe what had occurred and offered to provide more information. He also indicated that if MoRAST moves forward with the study, he thought the focus should not be so much on upstream issues of the main stem because there are also numerous other issues such as river degradation and habitat loss in the lower river. He noted that it may be appropriate to look at the entire basin, perhaps even look at the impacts of navigation support on the Mississippi River. In short, he thought such a study should consider ideas of potential benefit to the entire system. Mike Hayden said he thought the study should be more comprehensive and consider tributary projects. It was noted that one would not need to go beyond the 1944 FCA to look at USBR

projects but it would be to consider the Mississippi River. Harold Hommes noted that all of Iowa is between two rivers, the Missouri and the Mississippi. He said he thought Iowa would have an interest in including the assessment of impacts to the Mississippi River but they may need to take that issue back for more discussion. Brian Dunnigan said Nebraska DNR would also support broadening the scope and making clear that there were no pre-conceived outcomes expected from the study.

Yankton Sioux Tribe Chairman Robert Cournoyer noted that the Tribes were not ever consulted regarding the 1944 FCA. He noted that the Tribes have Federal Reserved Water Rights, although many of those have not yet been quantified. He noted the construction of the reservoirs resulted in a major loss of land, particular good bottom land, impacts to the ecosystem and many other consequences. He said lots of promises were made but not kept with the Tribes. He noted that Title XI only benefited two Tribes, the Lower Brule Sioux Tribe and the Cheyenne River Sioux Tribe. As a result, it is time for the Tribes to stand up and protect what rights and resources they have left. They have had very little economic development. Bob Walters, Vice Chairman of the Cheyenne River Sioux Tribe, indicated he appreciated being included in these discussions, but his Tribe has harsh words regarding the Pick Sloan program. His Tribe lost 104,000 acres of good land and was moved up to the windy flats which resulted in loss of timber, medicine plants and their livelihood. As a result he got involved in the AOP, MRRIC, etc. He said water is one of the most important things in life. He said he would need to take the draft White Paper back to his Tribe for review, but did encourage us working together on this matter. Faith Spotted Eagle of the Yankton Sioux Tribe said she grew up with this issue, has respect for the cultural resources that have been impacted and described the importance of them to the her Tribe and especially its elders. **Dr. Vandemoer indicated that this should not be just another study but should look for a better way to restore and protect cultural resources, among other things.** She said we need to be more proactive and address long standing Tribal needs. Kirk Nelson asked if we need two proposals to consider: one related to the Missouri River Basin and another that deals with both the Missouri and Mississippi Basins. Todd Sando said we needed to beef up the Tribal portion of the paper. He noted that 550,000 acres of land in North Dakota was given up for the reservoir system. He said most of the development has been related to the Pick portion of the plan related to navigation and flood control rather than the Sloan part of the plan that included upper basin water development and irrigation. He said North Dakota uses less than 1% of the inflow to Lake Sakakawea.

There was additional discussion about how the White Paper would relate to our congressional request last year, impact of the new administration and how to proceed from here. One idea would be to develop a revised draft of the White Paper for distribution in February with action to be taken at the March MoRAST meeting. However, it was noted we may want to act on this more quickly, depending on events in Washington.

## **Break**

The meeting was reconvened at approximately 4:00 p.m. Since several people had joined the meeting during the afternoon, more introductions were made.

**Tribal Participation in MoRAST** - Chairwoman Sexton asked Garland Erbele and Mike Hayden to provide some brief background about MoRAST. Garland indicated that prior to MoRAST, the Missouri River Basin Association (MRBA) had operated with members represented primarily by state water management agencies in the basin and one Tribal director from the Mni Sose Inter-Tribal Water Rights Coalition. He said most of the focus for several years had been on issues related to the USACE revised Master Water Control Manual process. Mike Hayden noted that the vision for MoRAST originally came from Joe Harkins of Kansas who believed a broader organization was needed in the Missouri River Basin. We had two separate groups, MRBA that primarily dealt with water management issues, and the Missouri River Natural Resources Committee (MRNRC) that primarily deals with biological issues in the basin. MRBA was abolished when MoRAST was created. MRNRC still exists but primarily functions as a committee of MoRAST. He noted that during the organization of MoRAST, it was recognized that more Tribal involvement was needed but it is apparent that there are still issues to be resolved related to Tribal participation. He noted that the State of Missouri has refused to come to the table by joining with MoRAST. He noted that if we are going to get Congress to invest in the basin we need to bring the different interests together, including water management, fish and wildlife and Tribal interests. Chairwoman Sexton noted the difference between MoRAST and MRRIC. She said MRRIC is an advisory committee to USACE and other agencies with a primary focus on how to restore the river system and recover endangered species and provide recommendations related to Missouri River Ecosystem Restoration Program (MRERP). In contrast, MoRAST is a non-profit organization of States and Tribes that can take action and make recommendations to Congress, etc. on a broader range of issues related to water and other natural resources in the basin.

**Review and discussion of MoRAST By-Laws** - After additional discussion about common interests and issues, GPTCA Chairman Ron His Horse Is Thunder noted that the Tribes did have some concerns regarding the existing MoRAST By-Laws. He noted that many of the Tribes had caucused prior to this meeting to discuss MoRAST participation and the By-Laws and while they had not taken explicit action, there were some common items of interest. He noted there was support for the proposed changes to the By-Laws considered at the last meeting, but one of their main concerns was the limitation of 6 votes for 28 Tribes in the basin. He said that the Tribes preference would be for each of the 28 Tribes, that wish to participate in MoRAST, to each have a vote or perhaps two votes similar to each of the States in the basin. However, he recognized that this may not be realistic or acceptable to the States. He indicated that many of the Tribes believed the 28 Tribes collectively should have the same number of votes as the States and suggested 16 seats on the Board. That would be equal to the two Directors from the 8 States allowed in the By-Laws. He indicated that the Tribes themselves would figure out who would be the Tribal members on the Board. With regard to dues, he indicated that the Tribes would not be able to pay \$20,000 each. He acknowledged that there was now partial reimbursement for Tribal travel to MoRAST meetings, but that would not be so necessary for many Tribes if the dues were more affordable. It was noted during the discussion that the States actually now only have 13 directors because only six states currently participate in MoRAST and the State of Wyoming has chosen to participate only through its water management agency, since it is not a main stem state. GPTCA Chairman His Horse Is Thunder said he thought the Tribes would be okay with an equal number of Directors on the Board, which would be 13, but if the States went up to 16, then the Tribes should also have 16

members on the Board. It was noted that there are currently two primary Tribal organizations in the basin: The Great Plains Tribal Chairman's Association and the Montana Wyoming Tribal Leaders Council and here would also be value of being able to provide a unified voice if the Tribes were included in MoRAST. Chairman Cournoyer said he thought most Tribes would be willing to pay some dues, depending on the amount. He said they appreciated the dues waiver through FY 09 because many of the Tribes were struggling financially.

Steve Adams was asked to summarize the proposal by Kansas submitted at the last meeting to amend Article III, Section 11, Manner of Acting, a copy of which was in the meeting packets. It was noted that Section 11 expires after this meeting if no action is taken to extend it, as was done in August, or it is not readopted or amended. Steve noted that the proposed amendment was submitted as a starting point to deal with concerns about the "vote to vote" provision and the number of votes to pass an action (proposed change from  $\frac{3}{4}$  to  $\frac{2}{3}$  of the directors present to pass an action.) He noted that the proposal did not address the Tribal participation question. Brian Dunnigan said changing the  $\frac{3}{4}$  super majority to  $\frac{2}{3}$  was not acceptable to Nebraska DNR as they wanted it as close to consensus as possible, due to the buy-in by the basin's Governors at the time MoRAST was formed, and to avoid a divided association. Bernie Hoyer said Iowa would like to keep the  $\frac{3}{4}$  vote, but could accept the other proposed changes. Jeff Vonk indicated he preferred to consider the Tribal participation decision first as the number of Directors involved would make a difference on the number of votes needed to make a decision. Chris Hunter of Montana made reference to the Columbia River Basin model. He supported increased Tribal voting and was opposed to the current vote to vote provision. There was further discussion about Tribal dues and quorum requirements. Several Tribal representatives indicated that if the Tribes were given equal voting rights, the Tribes would attend meetings and participate in MoRAST activities. They supported a simple majority of the total board as a quorum requirement provided that only dues paying members would be counted as a part of the quorum. With regard to dues, some present noted that limited dues for Tribes was acceptable but there needed to be some dues so that there would be ownership and buy in to the association. Mike Hayden asked for reaction to a proposal to set Tribal dues at 10% of the amount each State would pay per director. For example, if State dues were \$20,000 for States with two directors, Tribal dues would be \$1,000. Chairman Marcus Wells of the Three Affiliated Tribes noted that the working relationship today had improved between their Tribes and the Governor of North Dakota and believed that the States and Tribes need to work together on resolution of common problems. After additional comments by representatives of the States and Tribes, it was generally felt that the framework for potential amendments to the By-Laws had been outlined and it was suggested that each person give thought to these matters so that action could be taken Tuesday morning, when the business meeting resumes.

Mr. Pope reminded everyone that a 6:00 p.m. reception had been scheduled at the hotel to allow everyone present to mingle, get better acquainted and discuss matters of mutual interest. The meeting recessed at 5:00 p.m. and will reconvene at 8:00 a.m. December 2, 2008.

**Tuesday, December 2, 2008** – MoRAST Chairwoman Sexton called the meeting back to order at approximately 8:10 a.m. She reviewed the agenda and reminded everyone that one essential item will need a decision during the business meeting: the Section 11, Manner of

Acting issue, because that portion of the By-Laws needs to be continued or amended, as it otherwise expires.

**Other Agenda Items:**

**MRERP Study Update** – Wayne Nelson-Stastny, Yankton, SD., and USFWS Co-Lead for the MRERP study, provided a brief update on the status of MRERP, especially related to the status of cooperating agency participation. He noted that the USACE and USFWS were trying to get each State and Tribe that wish to become a cooperating agency to sign a letter of commitment in the near future. He indicated they were planning a meeting of the cooperating agency committee members in the next couple of months to begin more in-depth discussions of the study. He also noted that study staff would be presenting information to MRRIC in January and receiving their input in regard to the nature and purpose of the study.

**Resumed Business Meeting: Old Business:**

**Action on proposed modification to MoRAST By-Laws** – Note: during each of the following motions, Mr. Pope displayed the proposed changes, as clarified during discussion, on the screen using a PowerPoint projector. Mike Hayden moved to amend Article III, Section 11, Manner of Acting, to 1) eliminate the vote to vote provision in subsection (b) which would then read as follows: *(b) If consensus cannot be reached on any action, a recorded vote may be requested by a Director.*, 2) to amend Subsection (c) to read as follows: *An action by voting of the MoRAST shall require an affirmative vote of three-fourths of the Directors present and voting who have voting status at the time of the vote. If the sufficient number of affirmative votes is not achieved, then the MoRAST may continue discussion and/or issue a report outlining the substantive positions taken on the proposed action.*, and 3) to delete all of Subsection (e) and Article III, Section 12, Reexamination of Manner of Acting and other matters. The motion was seconded by Jeff Vonk. After discussion, the motion passed without objection.

Mike Hayden moved to amend Article III, Section 2, by 1) inserting the following phrase in line 4 after “Wyoming”: *and an equal number of Tribal representatives appointed by the twenty-eight (28) Indian Tribes of the Missouri River Basin*, 2) to revise the remaining language to read as follows: *One director from each state will be a representative from the state’s water management agency, and one director shall be from the state’s fish and wildlife agency unless both are in the same agency, in which case the Governor can choose another state official as one of the directors. The 28 Indian Tribes of the Missouri River Basin shall designate the voting Directors, each representing separate Tribes to serve on the MoRAST’s Board of Directors. No more than two-thirds (2/3) of the tribal Directors shall be from the upper basin above Gavins Point Dam. The tribal condition is designed to provide a geographical balance of tribal representation in the basin. Each non-voting Tribe of the Missouri River Basin, as well as tribal organizations, may have a non-voting advisory member.*, and 3) to amend Article III, Section 10, Dues and Voting Status on a parallel basis. The motion was seconded by Jeff Vonk.

During discussion of the motion, Bernie Hoyer noted that the five Iowa agencies involved in consideration of Missouri River issues had not had an opportunity to consider this specific proposal and would prefer additional time to consider the matter. However, several

representatives of Tribes and States noted that there appeared to be strong support for resolving the matter at this time rather than waiting until the March meeting. They noted that acting now would provide an opportunity for the Tribes to select their Directors soon and the Association could then move forward on other issues. Many of the Tribes present noted that this was an important issue and that they had come to the meeting hoping to resolve the matter. Several noted that they had agreed to work with the States but it was important to resolve this question as soon as possible. Jeff Vonk called the question. The motion passed with Bernie Hoyer of Iowa abstaining.

Mike Hayden moved to amend Article VII, Section 1, Assessments by adding 1) the following phrase at the end of the section: *,except that voting Tribes shall be assessed ten percent (10%) of the amount assessed for each state Director*, and 2) that Tribal dues will begin July 1, 2009 for Fiscal Year 2010. The motion was seconded by Dr. Vandemoer. It was noted that in accordance with the adopted budget, the dues will increase for FY2010 to \$25,000 per state or \$12,500 per State Director, which would result in dues of \$1,250 per voting Tribe, if the motion passed. Elizabeth Wakeman noted that some smaller Tribes with limited funds should not be left out if they wish to participate. Chairman Cournoyer indicated that the proposed dues were reasonable and should not work a hardship on any particular Tribe. It was also noted that all 28 Tribes could participate in MoRAST activities, but only those designated as voting Tribes would be required to pay dues. Terry Steinwand called the question. The motion passed with Bernie Hoyer of Iowa abstaining.

After additional discussion about remaining issues for the By-Laws, Sue Lowry moved to amend Article III, Section 6, Annual and Regular Meetings, by inserting the following sentence as the next to last sentence in the section: *The last meeting of the calendar year shall be designated the Annual Meeting*. Motion passed with Bernie Hoyer of Iowa abstaining.

The Tribal members present noted that the GPTCA and Montana-Wyoming Tribal Leaders Council, together with non member Tribes in the Basin, will work on selection of Tribal Directors to MoRAST. Bernie Hoyer noted that new Directors and Alternate Directors for the State of Iowa had been appointed by the Governor. He indicated that a person from Iowa DNR is expected to serve in one Director's position and that the other one is expected to rotate among the other four agencies that are members of the Iowa Interagency Missouri River Authority.

#### **New Business:**

**Election of Officers** - With regard to election of officers for 2009, it was noted that the officers for 2008 are: Chairwoman Mary Sexton, Vice-Chairman Mike Hayden, Secretary Tracy Streeter, and Treasurer Kirk Nelson. It was also noted that a Tribal Director can hold any office and the Tribes can also serve as an At-Large member on the Executive Committee. Chairman Marcus Wells nominated Chairman Rodney Bordeaux of the Rosebud Sioux Tribe to serve as the At-Large member of the Executive Committee. He was elected unanimously without objection. Mike Hayden moved to elect Mary Sexton as Chairwoman. Motion was seconded by Sue Lowry. Jeff Vonk made a substitute motion to re-elect the current slate of officers for 2009. Motion was seconded by Terry Steinwand. The motion passed without objection.

**Congressional Plan of Action** – Mr. Pope reviewed the draft Congressional Plan of Action which was previously provided to the Board and is in the meeting packets. He noted that as drafted, the purpose of the plan is to outline proposed issues to target for the 2009 congressional session and outline an effective strategy to achieve the goals identified. He said it included a brief background, identified areas of potential interest, expectations and priority issues for 2009. He said the draft includes the three primary issues that we have previously identified: 1) funding for the Missouri River Recovery Program, 2) funding and approval of the requested study of the 1944 FCA, and 3) funding for USGS water data collection programs. The draft plan includes a brief summary of each one of these issues and the status of their funding. The draft plan also includes a written strategy to achieve the goals established in the plan. In addition, the draft plan includes a listing of current members of Congress from the MoRAST States, and their contact information, along with information about key committees of interest, their leaders and which members of the basin delegation serve on those committees. Mr. Pope indicated that this information would be updated now that the elections have been held. There was discussion about the potential need to add issues for consideration as a part of the Congressional Action Plan. Several Tribal members noted that there is a need for action to better protect culture resources sites in the basin. Rebecca Kidder noted that the USACE had identified 400 sites on their reservation but only had sufficient funds to protect 12 of these sites. She noted it was a Federal obligation under several statutes to provide such protection. Others thought the draft plan of action was good but would also like to review it for potential additions. It was suggested that the Council on Environmental Quality may be an entity that we need to contact during a visit to Washington, D.C. Other Tribes also noted the difficulty in obtaining adequate enforcement to prevent Tribal artifacts from being removed and sold on the black market.

It was also suggested that cultural resources should be incorporated into the proposed 1944 FCA Study. The Tribes offered to provide additional information to Mr. Pope to expand this portion of the White Paper. Several in attendance encouraged a strong working relationship between the States and Tribes to deal with this issue. It was noted that each member should review the draft White Paper and offer suggested changes during this next month or so, so that a revised version can be developed. Bernie Hoyer asked what the relationship was between the BSNP and to the 1945 Rivers and Harbors Act. He said it was clear that there were grievances in the upper basin about the reservoir system but it should also be noted that there were substantial environmental impacts in Iowa and other downstream states as a result of the 1944 FCA. Several people supported adding this issue to the White Paper. It was also noted that it would be helpful to have a more detailed presentation about this issue and the fish and wildlife mitigation project at the next meeting and so the history of the various Federal acts can be better understood. Steve Adams of Kansas was asked to organize this presentation. It was also suggested that an update be provided on the cultural resources issue. Gay Kingman will provide the name of a potential speaker for this issue. In summary, it was suggested that the next draft of the White Paper be broadened to include: (a) Tribal issues, such as cultural resources and impacts from the construction and operation of the reservoir system (b) downstream environmental impacts related to the BSNP, (c) future water development and (d) tributary projects. The goal will be to have another draft available in

February for review at the March meeting. Additional people to work on the White Paper will be Bernie Hoyer, Todd Sando and Gay Kingman.

There was some further discussion about the need to send a delegation from the States and Tribes to Washington, D.C., and if so, when. Some individuals indicated they will be in Washington for other events in early March but that would be before our next meeting scheduled for March 24 and 25 in Billings, Montana. It was decided to explore the timing of various events associated with the new Congress and the status of the new Administration. If necessary, a trip can be made to Washington, D.C., before the March meeting, but otherwise, it can occur afterwards. Mr. Pope will work with the Executive Committee to finalize these arrangements.

**Next MoRAST Meeting** - With regard to the next meeting, March 24<sup>th</sup> will be planned as an all day meeting with the possibility of continuing the meeting during the morning of March 25<sup>th</sup> if needed. It was also noted that the MRNRC conference and Bi-Op Forum will begin the morning of March 25<sup>th</sup> with a plenary session that may be of interest to MoRAST participants.

#### **State, Tribal and Federal Reports:**

**Federal Reports** – Nick Stas, WAPA, in response to earlier questions, stated that Bonneville had previously received legislation that gave them a lot of authority. WAPA does not have those authorities for the Pick Sloan Program. He noted that at the last meeting he reported that there was an EIS being prepared related to wind energy. They had a scoping meeting in the fall, where there was testimony from States, Tribes and congressional members. The scoping recently ended and they will have a draft EIS in June or July 2009. Congress also directed them to do a wind/hydro study. There is a lot of pending legislation on renewable energy-- mostly related to transmission and grid matters that has been holding up development of wind energy in this part of the country. Wayne Nelson-Stastny, USFWS, said they have been working with the Obama transition team; looking at landscape scale environmental issues. There is a new Deputy Regional Director, Noreen Walsh. They are waiting on guidance for the upper part of the basin.

**Tribal Reports – Rosebud Sioux Tribe** - President Rodney Bordeaux stated they have been working on the development of energy with a tax credit for every member which can amount to \$3-\$4. They would like to know more about the Bonneville legislation. Rosebud is developing a 30 megawatt wind farm and working with Nebraska Public Power on a future 100 megawatt facility. The 30 megawatt facility is pretty close to being done. There is one small successful unit near a casino that is 750 Kilowatt. The electric cooperatives are working with them more now. They had a big storm recently. They see the need for more alternative energy since some areas were out of power for two weeks.

**Yankton Sioux Tribe** - Chairman Robert Cournoyer expressed his concerns about the Missouri River. They are working on many issues such as the CRMP on cultural sites. They had a contract with the Corps and identified 500 sites. Currently they are in litigation with the Corps on some of the takings areas and cultural sites that were disturbed. On one of the sites, when the dams were proposed a company was supposed to move the cemetery. The cemetery was

recently exposed when the water levels went down showing that the cemetery sites were never moved. The Tribe is also exploring alternative energy. Technology is now available to build green homes. Indian Reservations do not have developers coming to them to help with job creation. They need to create sustainability. The Federal government is putting its resources in the war in Iraq and now the bail out. The poor people are getting hurt worse. Unemployment is 70%. Economic collapse was not felt because they did not have much to begin with. Jobs are tough to come by. They try to rely on Treaties which promised certain things like health care and other Tribal needs. Health care is not the best and is a critical issue as there is no money to provide care. Health care on the reservations is a failure. We never get enough money to succeed. They need economic development-stimulation so that they can help themselves. They are stressing education to Tribal members. Casinos are marginally helping their situation, but the reservations are not near metro areas.

**Lower Brule Sioux Tribe** - Chairman Jandreau stated they have negative things they deal with too. They currently have an agreement to develop a 225 megawatt system but a week ago they found out that their project has been put on hold. There was additional transmission capacity given by WAPA to Denver. They are increasing the project at Buffalo Ridge. They do not have the financial capacity to compete and when they enter into contracts they are not a priority. There is a project on Standing Rock by the Corps. His Tribe irrigates 10,000 acres from the Missouri River. They had the greatest loss of land and 300 feet of shoreline. Hopefully, they can put in rip rap to slow down the problem. Siltation is a problem in the mainstem reservoirs. Some now have 3 feet in main channel. They have spent 11 years and \$8 million dealing with reforestation and activities to mitigate losses. 1,500,000 trees have been planted. They have monitors on the ground. Rosebud does a good job of monitoring and training people for mitigation. They are doing the best they can with their stewardship of the Missouri River. He stated that they do not see that same kind of activity above and below their reservation or by the Corps. He also stated that we must all realize that the Missouri River is extremely over appropriated. There are impending battles between Tribes and respective States over the water. Cooperation can only exist if there is enough of the resource to go around.

**Winnebago Tribe of Nebraska** - Darwin Snyder stated there was not too much going on for the Missouri right now, except for a restoration project. Some wildlife is coming back and an area has been opened up for fishing. It took years of working with USACE and they are now getting some work done. The Corps put them at the top of the list and the next time they are on the bottom. EPA is doing testing because of Mercury in water-not sure where that is coming from. They are also working with Red Mountain to develop wind energy. They have many issues in obtaining economic development.

**Northern Arapaho Tribe** - Kate Vandemoer spoke about the Wind River, - Big Horn to Yellowstone. There are two reservations on that system and water rights of 1.1 million acre feet have been quantified. The Sandia National Labs looked nationwide for sustainable areas and has a potential listing of sauger for restoration of the Wind River system. Tribal participation in MoRAST is more critical than in MRRIC because of its structure.

**Flandreau Santee Sioux Tribe** - Elizabeth Wakeman stated they have a new water specialist, as water is very important. They now have a weather station on Tribal land.

**Great Plains Tribal Chairman's Association** – Gay Kingman stated the association has 16 tribes in South Dakota, North Dakota and Nebraska. She stated she will work with David Pope to do what they can to assist with the next meeting. Her Tribe lost 150,000 acres under the 1944 FCA. It is a very emotional situation for them. There are also concerns with pipelines being constructed in the Missouri River Basin. The Oglala Tribe just had elections so their representative is not here, but they expect to have someone at next meeting.

**State Reports - Kansas** - Tracy Streeter stated the State legislative session starts in January. Last year the legislature expanded the gaming laws but it has been slow going because of the economy. The water agencies are going to promote increasing fees to get funds for water sustainability, lake restoration, etc.

**Wyoming** - Sue Lowry stated they participate with Colorado and Nebraska in dealing with the Platte River. Their contribution is to dedicate water from Pathfinder Reservoir for the Platte. The proposal is to enlarge storage in the reservoir. Wyoming requires legislative approval for exportation of 1,000 acre feet or more. The first hearing will be in Casper in a couple weeks.

**Iowa** - Bernie Hoyer noted that Iowa hoped to be in a constructive dialog and to find ways to increase the benefits from the Missouri River.

**Nebraska** - Brian Dunnigan reported on behalf of Kirk Nelson (who had to leave early) that Nebraska Game & Parks is pursuing an instream flow application on the Niobrara River. They also want to increase recreation on the Missouri River. Nebraska DNR has entered into non-binding arbitration with Kansas and Colorado regarding the Republican River Compact which is on a fast track process. Their legislature was looking at the qualifications for the DNR Director position, and is considering removal of the requirement that the Director be a professional engineer.

**South Dakota** – Jeff Vonk reported that South Dakota is looking into wind energy development. The industry and American Wildlife created an institute, which he sits on.

**North Dakota** - Terry Steinwand stated that reservoir levels are optimistic. They are waiting on an EIS for the Northwest Area Water Supply Project and Red River Water Supply Project.

**Montana** - Mary Sexton stated they completed the Blackfeet Compact process and it will now go to the legislature. They also worked on other reserved water rights.

The meeting was adjourned at approximately 12:30 p.m.

Respectively submitted,

/s/

Tracy Streeter, Secretary