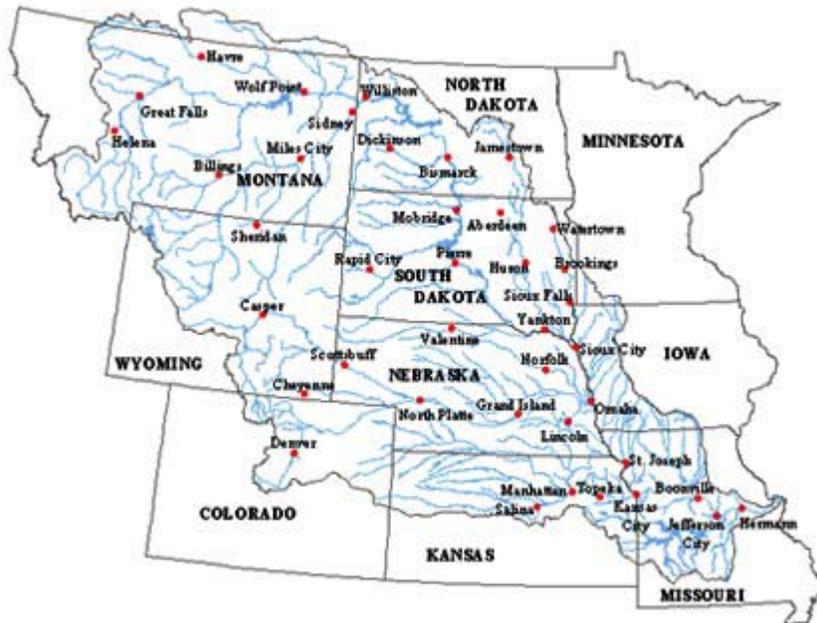


# **Situation Assessment Report on the Feasibility and Convening of a Missouri River Recovery Implementation Committee**



**Prepared by**

**CDR Associates**

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## Executive Summary

**Introduction**—The Missouri River (Missouri) is one of the longest and most important rivers in the United States. It is currently the only major river in the U.S. that is not regulated by an interstate water compact. To a significant extent, this unique status is due to fact that Missouri River interest groups include multiple Federal agencies, twenty-eight sovereign Tribal nations, eight states and a large number of diverse interest groups.

**The Missouri River Recovery Implementation Committee**—The U.S. Army Corps of Engineers (COE) is exploring ways to support more collaborative approaches to water management challenges in the Missouri Basin. The COE Record of Decision (ROD) on the Master Water Control Manual (2004) commits the COE to initiate a comprehensive Missouri River Recovery Implementation Plan (MRRIP) to restore the river’s ecosystem and protect and recover threatened and endangered species through a Missouri River Recovery Implementation Committee (MRRIC), composed of a cross-section of government entities and stakeholders.

In the spring of 2005, the U.S Institute for Environmental Conflict Resolution (USIECR), after consultation with the COE, USFWS and a number of other cooperating Federal agencies, Tribes, and Basin stakeholders, agreed to secure the services CDR Associates, a collaborative decision making and conflict management firm with a specialization in water management and endangered species issues, to conduct a situation assessment on the feasibility of convening a Missouri River Recovery Implementation Committee.

**The Situation Assessment Purpose and Process**—The Situation Assessment was conducted by the CDR Team – Christopher Moore, Ph.D., and Mary Margaret Golten (CDR Partners and Co-Team Leaders), Joseph McMahon, M.S., J.D., Matt McKinney, Ph.D., and Leigh Price, J.D. The assessment was designed to answer three questions:

1. *Should such an initiative be undertaken? (The “whether” question.)*
2. *What is the likelihood that institutional arrangements and procedures created will result in success? (The “probability of success” question.)*
3. *If an initiative is to be convened and organized, how might this be done? (The “how” question.)*

The assessment, conducted between December 2005 and April 14, 2006, involved in-depth interviews with over 90 individuals from diverse non-Federal, Tribal and state stakeholders (non-FTS), governments and government agencies throughout the Basin; research on past collaborative efforts to address endangered species recovery issues; as well as a series of polls of concerned parties and potential participants in the future MRRIC.

## Findings and Recommendations

**Feasibility of Convening and Functioning of MRRIC**—The convening of this Committee is conducted within the context of broad political and economic issues, historical and current relationships among potential stakeholders, and the interests of sponsoring agencies. In conducting the situation assessment, the CDR Team identified both positive forces and resistance points or hurdles, some quite significant, that sponsoring agencies, potential non-FTS stakeholders and other participating governments and governmental agencies must overcome if a recovery implementation committee is to be convened and function effectively.

Some of the opportunities or positive forces which may facilitate the convening and functioning of the future Committee include:

- ◆ *A Biological Opinion and agreements between the Corps of Engineers and the USFWS that commits them to develop a Missouri River Recovery Implementation Committee;*
- ◆ *A dynamic among stakeholders that “It’s time for something different;” a significant number of parties are growing weary of litigation that has not resulted in answers to contested issues and which has been extremely expensive as well as time consuming;*
- ◆ *Congressional authorizations of significant funds to address endangered species issues on the Missouri River; and*
- ◆ *Some success in building positive working relationships, engaging in effective information exchange and joint education, and developing possible procedural solutions in the 2005 Spring Rise process.*

In spite of the above positive forces, there are a significant number of hurdles and obstacles to the convening and functioning of MRRIC, including:

- ◆ *A low level of public trust in government and government agencies;*
- ◆ *A highly charged national environment concerning the protection and recovery of endangered species;*
- ◆ *Increased focus on the private property rights movement;*
- ◆ *A national debate over what constitutes good science;*
- ◆ *Complexity in institutions, stakeholder groups and data combine to make collaboration difficult;*
- ◆ *Lack of conflict expertise and experience in collaborative processes, as well as confusion regarding which strategy – collaboration, delay and resistance to change, a political route or litigation – will be the most effective, leading to polarization, escalation and politicization of issues;*
- ◆ *Absence of strong and visible institutional leaders and champions for MRRIC;*
- ◆ *Misunderstanding of the differences between a broad public participation processes and collaborative decision making procedures; and*
- ◆ *Public efforts to undermine the process, based on serious charges of untrustworthiness of many parties involved in this process.*

Given the obstacles and opportunities above, what is the probability that MRRIC can be convened and will be successful? The CDR Team believes that the convening of the Committee will continue to be difficult, but that it will take place.

**Functions and Actions of MRRIC**—The Committee is likely to have many activities other than making recommendations on recovery actions on the Missouri. In addition to its primary function to provide concerned government agencies with both general and specific recommendations regarding endangered species recovery, policy, programs, projects and specific actions, the Committee's other roles could include knowledge collection, coordination, analysis and dissemination; establishing effective public involvement processes to gain broader input on recovery issues, problems and options; providing decision support to concerned agencies; and supporting and empowering local communities and states to implement recovery actions.

**Focus and Mandate of MRRIC**—While there was a broad spectrum of opinion regarding what the focus and scope of recovery should be, there was general agreement among a large majority of interviewees that if the Committee is to be successful in any initiatives that are undertaken, concerned parties must be willing to work together, focus on the future of the River, and significantly change some of their behaviors toward others who feel differently about issues under discussion.

**Accountability, Reporting Relationships and Authority of MRRIC**—There is a significant level of agreement among potentially concerned parties that the Committee should, at a minimum, be accountable and make recommendations to the COE. In addition, a significant number of people felt that the Committee should report to both the COE and the USFWS, or possibly to a consortium of Federal agencies involved in recovery activities.

Virtually all parties interviewed recognized that MRRIC will be an advisory body, making recommendations to the concerned Federal agencies, which would still have final legal decision making authority.

**Structure**—The majority of interviewees see MRRIC as having a Plenary Committee which would be the governance and decision making body on recommendations for the initiative. The Committee will also likely include working groups and technical committees with membership broader than those on MRRIC; government, government agency and stakeholder caucuses; and a robust public involvement component to elicit broader input on issues under consideration.

Interviewees generally agree that MRRIC meetings should be professionally facilitated, as they did not think that any potential member of the Committee would be seen as neutral or impartial enough to serve in this role, have the trust that would be required from a broad spectrum of those involved, or have the requisite process expertise.

**Membership and Selection of Members of MRRIC**—The majority of interviewees prefer to have a Committee with a specifically designated membership, balanced among representatives of the primary interests in the Basin. However, there is considerable debate regarding the categories and numbers of stakeholders on the Committee.

Federal agencies are currently in the process of determining the appropriate number of Federal participants on the Committee. The agencies have decided that their delegates will be fully involved in deliberations of the Committee, but will not participate in decisions on recommendations made to Federal agencies.

Each of the 28 sovereign Tribal nations should be invited to participate in MRRIC and all should have a seat on the Committee. Tribes will meet individually and together prior to the formal convening of MRRIC to determine how they wish to participate in the process.

The states each want to have two members on MRRIC, with the exception of Wyoming, which will have only one. When participating in Committee decision making, the states will make every effort to speak with one voice.

Membership categories for non-FTS stakeholders are complicated. After multiple interviews, discussions and polling, the CDR Team identified a number of categories, the majority of which are strongly supported by most non-FTS stakeholders. These include:

**Flood Control** (Flow related issues related to flood control, interior drainage, bank stabilization and sedimentation, as represented by related interest groups or organizations);

**Irrigation** (Water for agriculture and ranching as represented by riparian landowners, irrigators, irrigation districts or organizations representing agricultural interests);

**Hydropower** (Hydropower as represented by public and/or private power interests);

**Water Supply and Quality** (Municipal, industrial—including water for cooling power plants, rural water supply and waste water discharges, as represented by municipalities and other organizations with water supply and quality as a major focus);

**Navigation and Terminals** (Navigation, terminal and other socio-economic interests related to shipping on the river, as represented by organizations with this focus);

**Fish and Wildlife and Endangered Species** (Non-endangered and endangered species as represented by non-governmental conservation and environmental interest groups or organizations);

**Recreation** (Recreation and river-based tourism interests including, but not limited to anglers, hunters, hotel/motel/lodge owners, trailer/tent camps, tourism representatives, etc., as represented by interest groups or organizations with this focus); and

**Socio Economic Development** (Broader economic development issues in the Basin represented by regional organizations with large memberships not already represented or advocated for by membership categories above, such as Chambers of Commerce, regional council of governments, Conservation Districts/Natural Resource Districts or other groups as decided by the Committee)

And possibly,

**Historic Properties, Cultural Resources and Burial Sites** (Representing interest groups or organizations who are not members of Tribes or state employees); and  
**At-Large** (Individuals who represent bridging interests or views in the Basin)

There is not a consensus among stakeholders on categories, numbers of members per category, or selection procedures. For this reason, the CDR Team recommends a two-phase convening process. An initial number of seats per membership category for the first meeting of the Committee should be decided upon by the convening Federal agencies, simply to begin the process. Possible categories and numbers are recommended in this report.

Prior to the first meeting of MRRIC, stakeholder groups should be asked to select their representatives for the first session. At the first or a subsequent meeting, non-FTS members should make final decisions on categories and the appropriate number of seats for in each category, with an emphasis on equitable allocation among membership groups.

**General Characteristics and Qualities of Future MRRIC Members**—Interviewees are in significant agreement on the characteristics and qualities of people who should represent key Basin stakeholders on the Committee. These can be found, in the report—*Desirable Characteristics and Qualities of Future MRRIC Members*. Some of these characteristics are:

- ◆ Be formally designated as a representative of and spokesperson for Federal, Tribal, and state agencies, or of a non-FTS stakeholder group in the Basin that has the authority to represent a geographic or political constituency or has a significant number of members concerned about or with a “stake” in the resolution of issues that will be the focus of the Committee;
- ◆ Be willing to support, adhere to and be accountable for behavioral and meeting ground rules or guidelines approved by the members of the Committee;
- ◆ Be willing to engage in cooperative and collaborative communications and behaviors between and among other members of the Committee, related agencies and facilitators, both during the Committee meetings and in communications or interactions between meetings;
- ◆ Be able to listen to and willing to try and understand the interests and concerns of stakeholders other than those whom the member represents, particularly those with whom s/he has the least in common; and
- ◆ Be willing to engage in good faith and work toward development of recommendations that satisfy as many stakeholder interests as possible and which “do no harm” or minimize adverse impacts to other members or stakeholders;

**Deliberations and Decision Making by MRRIC and its Working Groups**—Almost every interviewee felt that the Committee should seek to reach decisions by consensus, as a way to develop integrative solutions representative of the broad range of stakeholder interests, and to maximize the group’s political strength and influence. In addition, a

number of procedures have been identified to assist the Committee should it be unable to reach consensus.

**Intergovernmental and Interagency Cooperation and Commitments**—Interviewees are interested in the resolution of issues among states currently involved in the Missouri River Association of States and Tribes (MoRAST) as well as with states that may not join the organization. They also endorse the development of an interagency Memorandum of Understanding among Federal agencies, which would commit agencies to coordination on MRRIC issues both at the Basin and Washington, D.C. levels.

**Possible Issues to be addressed by MRRIC**—The Situation Assessment Report outlines a number of issues that may be the subject of deliberations and recommendations by the Committee. These issues must be precisely defined and prioritized by the Committee. Among these are water allocation issues (flow management, competition for water, upstream/downstream needs, and interior drainage); intergovernmental relations (Federal/Tribal and relations among states); and monitoring (standards and criteria and assessing impacts). Another issue, development of science that has integrity and in which there is public confidence, may be one of the most difficult that the Committee will have to address.

**Funding**—Interviewees believe that, at least initially, the majority of funding for the MRRIC should come from the Federal government, specifically from COE appropriations for species recovery activities. Additionally, funds should be made available to non-FTS members whose organizations cannot financially support their participation.

**Protocols, Meeting Guidelines and Enforcement of Ground Rules**—A significant number of interviewees emphasized the critical importance of having clear protocols (meeting guidelines and ground rules) to guide the operations of the Committee and the conduct of its members. They also noted that procedures will be needed for the enforcement of these protocols, with consequences for non-compliance.

**Federal Advisory Committee Act (FACA) Issues**—The Federal Agency Advisory Committee Act (FACA or Act 5, U.S.C. App.2) establishes guidelines for the convening, structuring and functioning of Federal committees which involve diverse stakeholders. Chartering MRRIC under FACA is one alternative for its formation and structure. Another is securing an exemption from FACA under provisions for the establishment of Recovery Committees under Section 4 of the Endangered Species Act. The appropriate Federal agencies and their legal counsel will need to make timely decision regarding the most appropriate chartering procedure for MRRIC.

## ***Summary of Recommendations of the CDR Team regarding convening of MRRIC***

Federal agencies will need to take a significant leadership role in convening MRRIC. Individually or collectively, they must make initial decisions regarding structural issues to bring the Committee into existence and launch its work. Once the Committee is convened, its members will begin to take a stronger role in decision making. To move forward on convening the Committee, Federal agencies should:

- 1) Make required decisions regarding the appropriate chartering mechanism MRRIC - FACA or FACA exemption under the ESA;
- 2) Make a decision on the initial size, membership categories and proposed allocation of seats among non-FTS stakeholders, governments and government agencies *for the first meeting of the Committee*, and communicate these decisions to concerned non-FTS stakeholders governments and governmental agencies;
- 3) Decide on procedures to be used for selecting non-FTS members of the Committee, communicate the decision to concerned stakeholder groups and organizations, and encourage or, if appropriate, facilitate its implementation; and
- 4) Convene the Committee in a timely manner, allowing adequate time for all representatives to plan to attend.

Organizationally, at the first meeting of the Committee, non-FTS members should confirm whether the tentative membership categories are correct, the allocation of representatives to membership categories is acceptable, and make any needed adjustments to membership—at least for the initial period of the Committee's operation.

## **Conclusion**

A Missouri River Recovery Implementation Committee is needed to coordinate activities and initiatives of diverse parties in the Basin, as they develop recommendations on recovery activities for three endangered species. While there are a number of positive opportunities and forces that will help in the convening and functioning of the Committee, there are also significant hurdles to overcome. Key government agencies must meet as soon as possible after the completion of the final Situation Assessment Report to reach decisions on how to convene the Committee. Once MRRIC starts to meet, concerned non-FTS stakeholders and governments can begin a coordinated effort to recover the endangered species and balance the uses of one of the nation's most valuable resources, the Missouri River.

## Section 1. Background

The Missouri River (Missouri) is one of the longest and most important rivers in the United States. It is also one of the most ecologically and politically complex. The source of the Missouri and a number of its tributaries are in the Rocky Mountains. From high-country beginnings, the river flows for 2,341 miles through a range of diverse ecological regions and eight different states until it joins the Mississippi River. It encompasses 529,350 square miles and drains one sixth of the United States.

Management of the Missouri has never been easy. It is currently the only major river in the U.S. that is not regulated by a formal interstate water compact. To a significant extent this unique status is due to the large number of governmental entities and interest groups that are concerned about the river. These include multiple Federal agencies, twenty-eight sovereign Tribal nations, eight states and a large number of diverse interest groups, some of which include farmers and irrigators, interior drainage and bank stabilization organizations, municipalities, water supply, shipping and navigation interests, hydropower and other energy producers that require cooling water, environmentalists and conservation organizations, and recreationists.

The agency with overall responsibility for management of the Missouri is the U.S. Army Corps of Engineers (COE). The COE's mandate and authorizing legislation requires it to find a balance among competing needs and uses of the river by concerned governmental entities and stakeholders. Integrated management requires preventing floods, enabling navigation and shipping on the river, guaranteeing hydropower generation, preserving water supply for multiple uses, protecting water quality, facilitating recreation, meeting Tribal Trust responsibilities and protecting wildlife and their habitat, especially endangered species.

The COE's mandated and authorizing legislation requires it to find a balance among competing needs and uses of the river by concerned governmental entities and stakeholders.

The COE's approach to management of the river is detailed in its Missouri River Master Water Control Manual (Master Manual). In recent years, the development of this manual has been highly controversial and the subject of intense debates and conflicts. However, after important revisions, the COE released the new manual in 2004.

A second important document that influences how the river is managed is the Endangered Species Act (ESA), which defines procedures for listing and recovery of endangered species. In 2002, the U.S. Fish and Wildlife Service (USFWS) issued a Biological Opinion (BiOp) and in 2003, amended it. According to the BiOp, flora and fauna living in or along a river are often highly dependent on certain patterns of stream flow and habitat to assure their sustainability. The USFWS believes that past management and regulation of the Missouri, as well as changing hydrological patterns, have had significant

and adverse impacts on three endangered species – the piping plover, the interior least tern and the pallid sturgeon. The BiOp outlined specific measures to be taken by the COE to recover the three endangered species.

...flora and fauna living in or along a river are often highly dependent on certain patterns of stream flow and habitat to assure their sustainability.

A federally protected 39-mile segment (above Gavins Point Dam) and a 59-mile segment (below Gavins Point Dam) of the Missouri River are both a unit of the National Park System and component of the nation's Wild and Scenic Rivers System. The National Park Service (NPS) has jurisdictional authority and management responsibilities within these two segments. The two river reaches are managed in accordance with the NPS's Organic Act of 1916 (as amended) and the Wild and Scenic Rivers Act. Other NPS units located along the Missouri River include Lewis and Clark National Historic Trail, Knife River Indian Villages National Historic Site, and Fort Union Trading Post National Historic Site. The NPS, pursuant to the authorities of the Organic Act and the Wild and Scenic Rivers Act, is responsible for evaluating and approving actions or activities that could adversely affect nationally significant resources within or otherwise associated with these sites.

In addition, there are 28 tribes that have lands along the Missouri River or its tributaries. Tribes have lived along the river since time immemorial. At the present time, Tribes have a need to protect their water supply and quality and their water intakes, for diverse economic and social uses. They also have serious concerns regarding the protection of their cultural resources and burial sites. Federal legislation with which the COE must comply to protect Tribal and other historical and cultural resources include the National Historic Preservation Act, the Archeological Resources Protection Act, the American Indian Religious Freedom Act of 1978, the Native American Graves and Repatriation Act of 1990, and the Antiquities Act of 1906.

The Missouri flows through eight states, each of



**Pallid Sturgeon**



**Piping Plover**



**Interior Least Tern**

which has a significant interest in its well-being and use. Upper Basin states are often concerned about recreation, tourism, water for irrigation and hydropower, while Lower Basin states often focus on flood control, impacts on interior drainage, the need for cooling water and navigation.

Beyond Federal, Tribal and state governments are numerous other parties who also have interests in the way the river is managed. They have particular concerns about potential impacts of changes on the recovery of endangered species and other uses, especially in years of drought. Environmentalists are concerned because they see management changes as critical to the recovery of the endangered species, other non-listed flora and fauna and the ecological health of the river. Power producers want predictable amounts of water for hydropower production and cooling power plants. Upstream farmers, the tourist industry, fish and game interests and recreationists want to maintain water in reservoirs for their various uses. They fear that releases early in a year, especially under draught conditions, may adversely impact availability later in the season. Downstream farmers are concerned about potential impacts on interior drainage and prevention of flooding, preservation of agricultural land use along the river, maintenance of local tax bases and barge shipping costs. Municipalities on various reaches of the river want to assure water availability for various uses and to avoid adverse impacts on water intakes. Navigation and terminal interests and are worried about impacts of any management changes on their economies and on the length of the navigation season. Finally, many people living along the river want bank stabilization to protect their property and property values. These are just a few of the parties and their concerns about the future management of the river.

The COE is exploring ways to encourage and support more collaborative approaches to water management challenges in the Missouri Basin. The COE Record of Decision (ROD) on the Master Water Control Manual commits the COE to initiate a comprehensive Missouri River Recovery Implementation Plan (MRRIP) to restore the river's ecosystem and protect and recover threatened and endangered species. To explore the feasibility of implanting such a plan, the ROD specified that actions associated with the MRRIP will be implemented through coordination with a Missouri River Recovery Implementation Committee (MRRIC), composed of a cross section of government entities and stakeholders, to ensure a comprehensive approach and broad based support for recovery implementation.

It should be noted that the establishment of a MRRIC does not replace Federal agency agreements and responsibilities to conduct government-to-government meetings and consultations with Tribes, or other agency obligations regarding rules or procedures for public participation in their formal decision making processes.

The COE is exploring ways to encourage and support more collaborative approaches to water management challenges in the Missouri Basin.

The situation assessment process described below is designed to assist in the design and implementation of MRRIC initiative.

## **Section 2. The Situation Assessment and Scope of Work**

In the spring of 2005, the U.S Institute for Environmental Conflict Resolution (USIECR), after consultation with the COE, USFWS and a number of other cooperating Federal agencies, agreed to secure consulting services of an independent conflict management firm to conduct a situation assessment on the feasibility and procedures to convene a Missouri River Recovery Implementation Committee (MRRIC). In April of that year, USIECR contracted with CDR Associates, an international collaborative decision making and conflict management firm with a specialization in water management and endangered species issues, to conduct the situation assessment. (See Appendix 1 for a description of CDR Associates and the CDR Team.)

The Scope of Work for the situation assessment included the following activities:

- ◆ *Review background information relevant to the establishment of the Missouri River Recovery Implementation Committee (MRRIC)*
- ◆ *Convene an Organizational Meeting of a Situation Assessment Coordination Group*
- ◆ *Develop an Interview Protocol and Letter of Introduction*
- ◆ *Identify Key Tribal and Stakeholder Interests and Specific Individuals to be Interviewed*
- ◆ *Schedule and Conduct Confidential Interviews*
- ◆ *Conduct an Analysis of Assessment Findings and Convene a Meeting to Consider Implications*
- ◆ *Prepare Draft and Final Situation Assessment Report*
- ◆ *Meet with Tribes and Stakeholders to Discuss Results of the Situation Assessment*
- ◆ *Conduct Surveys of Tribes and Stakeholders regarding Structure of MRRIC*

### **2.1 The Situation Assessment Process**

The following three major questions must be addressed in any situation assessment:

1. *Should such an initiative be undertaken? (The “whether” question.)*
2. *What is the likelihood that institutional arrangements and procedures created will result in success? (The probability of success question.)*
3. *If an initiative is to be convened and organized, how might this be done? (The “how” question.)*

The approach to conducting a situation assessment described below details activities undertaken by the CDR Team to explore, address and answer these questions.

The CDR process for conducting a situation assessment relied on extensive interviews and background research on relevant Missouri River issues. In addition, a polling process has been added to gain additional information. The combination of data collection

procedures enables the situation assessors and ultimately users of the situation report to gain insight into the answers to three major questions above, and also to identify: 1) key parties (governmental and non-governmental), and groups and/or individuals who might participate in a collaborative decision making initiative; 2) potentially important topics for discussion; 3) diverse perspectives on those issues; and 4) possible organizational structures for information exchange, dialogue, deliberations and decision making on recommendations.

Information gained through the situation assessment process is presented to key governmental decision makers and potential stakeholders as a means to assist them in deciding whether and how to proceed with a collaborative effort.

A detailed description of CDR's approach to conducting the situation assessment can be found in Appendix 2.

## **2.2 Identification of Key Individuals, Groups, Organizations, Tribal members and Agencies to Interview**

At the Core Planning Group meeting of the Spring Rise Facilitation (SR), another Federal initiative to promote recovery of the pallid sturgeon on the Missouri River, an informal, self-identified Situation Assessment Advisory Group (SAAG) was formed to advise the CDR Team on the situation assessment process. The SAAG had three initial tasks: 1) to advise the CDR Team regarding potential first-round interviewees to talk with regarding the feasibility and convening of MRRIC; 2) to identify what other information might be helpful in considering a future structure for MRRIC; and 3) to review key questions to be asked of interviewees.

The process of interviewee identification was incremental and occurred in several rounds. The SAAG had its first meeting in Bismarck, North Dakota on June 30<sup>th</sup>. CDR asked the 18 member Advisory Group to make recommendations for interviewees who: 1) would have valuable insights into relevant historical and current Missouri River issues; 2) were perceived as leaders of key interest or stakeholder groups or government entities in the Basin; 3) would be likely to play a significant role in reaching solutions to Missouri River issues in question; or 4) might challenge the outcome of a collaborative process if they did not have input or were not involved. The Advisory Group recommended that the CDR Team cast its net widely when pursuing interviewees. They suggested a first round of interviews with members of the SR Plenary Group, and a second round with people recommended by these interviewees. They recommended that CDR especially interview parties in the Upper Basin as they had not been as involved in the SR process. CDR took this advice and explored how an extensive set of interviews could be conducted within the situation assessment budget. (See Appendix 3 for the final list of Advisory Group members.)

In addition to providing advice on whom to interview, the SAAG reviewed and provided input on potential interview questions. The interview questions used by the CDR team can be found in Appendix 4.

Because of the intensity and time required of SR participants and the CDR Team to engage in and facilitate the SR process, the need to move funds for MRRIC situation assessment to the budget for extended SR negotiations, and the need for parties and agencies to focus on the Annual Operating Plan (AOP) process, USIECR in consultation with concerned Federal agencies, decided that situation assessment interviews should not begin until after the conclusion of the COE's public meetings on the AOP, in late November of 2005.

### **2.3 Interviews**

Based on inputs from the SAAG, the Team selected a balanced cross-section of diverse groups and people to interview. The original Scope of Work for the situation assessment called for 50 interviews to be conducted with concerned stakeholders, many of which were projected to be face-to-face group meetings held in various reaches of the Missouri River. After consultation with USIECR, it was decided that since CDR had worked closely with members of the SR Plenary Group (some of whom were to be among the first set of interviewees), it would probably not be necessary to conduct face-to-face interviews with them. Resources would be better spent by conducting a larger number of interviews by telephone.

CDR contacted all SR Plenary Group members to request interviews and, based on their interest and responses, was able to interview almost all of them. By following up on recommendations for further people to talk with, and using a combination of individual and group in-person and telephone interviews, the CDR Team ultimately interviewed over 90 individual stakeholders throughout the Basin, as well as many from agencies in Washington D.C., Portland, Oregon and the region. A list of interviewees can be found in Appendix 5.

The CDR Team interviewed over 90 individual stakeholders throughout the Basin, as well as many from agencies in Washington D.C., Portland, Oregon and the region.

Interviewees often wanted to know how their input would be reported in the situation assessment report. Interviews were conducted on the basis of confidentiality, with a commitment to interviewees that the Team would not identify or attribute specific views or comments to any one individual. The Team informed all interviewees that it would prepare a situation assessment report for USIECR, concerned Federal agencies and all interviewees, and that the document would identify aggregated themes, issues and general perspectives gained from interviews.

## **2.4 Results of Background Research on Similar Multiparty Initiatives to Address Recovery Issues**

The CDR Team was advised to “not reinvent the wheel” and to consider lessons from prior multi-stakeholder initiatives conducted to address public policy environmental and habitat recovery issues. In conducting secondary research on past efforts, the CDR Team reviewed the following four initiatives:

- ◆ The Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin
- ◆ The Lower Colorado River Multi-Species Conservation Plan
- ◆ The Platte River Cooperative Agreement
- ◆ The South Florida Ecosystem Restoration Task Force

In reviewing the focus and work of these committees, the CDR Team analyzed:

- ◆ The mandates, focus and authorities of the organizations
- ◆ The structure of the organizations
- ◆ The use of facilitators and/or chairpersons
- ◆ Deliberative and decision making roles and procedures
- ◆ How relevant and acceptable data was obtained
- ◆ Funding mechanisms

A summary of the Team’s research on the four initiatives identified above can be found in Appendix 6. This information has been integrated with data gained from interviews, and included in recommendations by the CDR Team in the next section of this report. We hope that the experiences described in these and other integrated river Basin planning projects will be useful to MRRIC participants as they begin to put their own plans into effect.

After the presentation of the Draft Situation Assessment, several other watershed-based recovery organizations were identified as possible models for MRRIC. These included the Northwest Power and Conservancy Council (NWPPCC), the Lower Columbia River Estuary Partnership (LCREP), and the Shared Strategy for Puget Sound (Shared Strategy). The CDR Team did not have an opportunity to conduct research on these initiatives. However, it may be worthwhile to study them as MRRIC moves toward final convening and decision are being made about its organizational structure.

## **2.5 Polling of Concerned Government Representatives and non-FTS Stakeholders**

After the presentation of the Draft Situation Assessment Report on February 28, 2006, CDR polled potential stakeholders regarding: 1) their support for possible non-Federal,

Tribal and state (non-FTS) membership categories for the future Recovery Implementation Committee; 2) suggested allocation of seats among membership categories; 3) preferred member selection procedures; 4) meeting and scheduling goals; and 5) possible location of meetings. The results of the polls can be found in Appendix 7. Poll inputs have been analyzed and, when appropriate, incorporated into the findings in the situation assessment Report as well as in recommendations by the CDR Team.

In all, three polls were sent out to 415 potential respondents, the majority of whom had registered with the U.S. Institute for Environmental Conflict Resolution, were involved in the Spring Rise Facilitation, had been interviewed for the situation assessment or had requested to be on the CDR e-mail list after the presentation of the Draft Situation Assessment Report.

The first poll was completed by 96 respondents, the second by 215 and the third by 87. The first and second polls concerned membership categories and were sent to all government and non-FTS parties. The difference among the numbers of respondents was due to the fact that CDR received a broadcast e-mail on the second poll, with virtually identical responses. This influx of responses constituted 47% of the respondents to this poll. CDR conducted an analysis and controlled for this large number of responses to the second poll, to determine if they significantly affected the poll results. This was not the case except for two proposed membership categories. (A detailed analysis of this impact and CDR's response may be found in Appendix 7, Polling and Polling Results, "Results of Poll 2.") Ultimately the proposed Fish and Wildlife and Endangered Species membership categories were combined, and a new Socio-economic Development category was created, which would include regional and multipurpose organizations concerned about socio-economic issues that were not adequately covered by other potential membership categories.

The third and last poll focused primarily on gaining input on possible allocations of seats among membership categories and the Upper and Lower Basin, as well as preferences for selection procedures for non-FTS members of MRRIC. The results of this poll are included in later sections of this report that focus on membership categories and selection procedures.

## **2.6 Assessing and Analyzing Data Gained from Interviews and Background Research**

Analysis and interpretation involves the identification, organization, and elaboration of key themes, issues, and interests gathered from interviews, background information and polls. CDR examined potential mandates, authority, organizational structures, membership and member selection procedures, decision making processes, data needs and funding of a future Recovery Implementation Committee. CDR also looked at relationships among individuals and groups that may influence how current or future issues are raised and conflicts resolved.

While the results of the situation assessment process are primarily qualitative and subjective, there are also certain quantitative components. CDR paid close attention to issues, perspectives, or strategies that arose in a majority of interviews or polls and typically characterized these as “key” or “significant” themes. However, a perspective that may not have been shared by the majority of interviewees or poll respondents may also have been considered as significant if it provided a potentially valuable insight, option or recommendation. In the report, the Team has tried to distinguish between majority views and insights held by a small number of those interviewed and polled. CDR followed the process described above when conducting and analyzing the results of situation assessment interviews and polls on the feasibility of convening, the structure and possible areas of focus of MRRIC.

### **Section 3. Findings and Conclusions from Interviews**

Described below are the themes gleaned from more than 90 interviews, three polls and background research, and recommendations from the CDR Team. Where appropriate, we have also included some of the results of our background research.

**The Importance of MRRIC Flexibility and Adaptation.** The Assessment Team believes that this Assessment is best read and used with the understandings that: 1) it is the result of interviews with individuals who did not always have the benefit of comparing other viewpoints; and 2) recommendations concern the starting point for the Recovery Implementation Committee, not a terminal approach about how MRRIC should or will always function. We expect that MRRIC will learn and adjust over time. Therefore, MRRIC must retain flexibility and avoid actions that reduce the ability of its members to learn, amend and improve the process and its outcomes.

#### **3.1 Feasibility of Convening a Recovery Implementation Committee for the Missouri River**

Situation assessments on the feasibility of initiating collaborative forums and processes must address the three major questions identified earlier in this report. Again:

- 1. Should such an initiative be undertaken? (The “whether” question.)*
- 2. What is the likelihood that institutional arrangements and procedures created will result in success? (The probability of success question.)*
- 3. If an initiative is to be convened and organized, how might this be done? (The “how” question.)*

This section of the assessment report will address the first and second question. The remainder of the report will focus on the third.

### **3.2 Opportunities and Obstacles for the Creation of Recovery Implementation Committee**

Before the “whether” question can be answered – whether a Recovery Implementation Committee should or can be established – we need to examine some of the forces for and against both its creation and success. An initiative such as MRRIC is not convened in isolation of the broader political and economic environment, historical and current relationships among potential stakeholders, activities of sponsoring agencies, or the presence of intermediaries.

In conducting the situation assessment, the CDR Team identified a number of resistance points or hurdles, some quite significant, that sponsoring agencies, potential non-Federal, Tribal and state stakeholders and other participating governments and governmental agencies will have to overcome if a Recovery Implementation Committee is to be convened and function effectively. We also saw positive factors which may help promote success.

Initially, the CDR Team was quite optimistic that the situation assessment could be completed in an efficient, timely and amicable manner and that the Committee could be convened fairly rapidly. This has not been the case. In the 28 years of the Team’s experience conducting assessments on both domestic and international issues and conflicts, we have seen few cases that had the dynamics, complexity, degree of suspicion and, in some cases, the animosity that are present in this case. We believe that some of these dynamics will continue to have an impact on both the convening and actual implementation of the Recovery Implementation Committee.

#### **3.2.1 Opportunities**

First, there are many opportunities or positive forces that may significantly help the convening and functioning of a future MRRIC. These include:

- ◆ ***A Biological Opinion and agreements between the Corps of Engineers and the USFWS that commits them to develop a Missouri River Recovery Implementation Committee*** – At this time, the concerned Federal agencies are legally committed to initiate some form of Recovery Implementation Committee. This means that some form of a Committee will be formed, regardless of the barriers.
- ◆ ***It’s time for something different –a significant number of parties are growing weary of litigation that has not resulted in conclusive answers to contested issues and which has been extremely expensive and time consuming*** – A number of parties

involved in situation assessment interviews indicated their perception that the years of litigation over Missouri River issues has not resolved a number of significant issues. While litigation may be used to delay actions, at some point actions will be taken. Many said that they were ready to try talk as a means of addressing contested issues and to see if alternative procedures to litigation might better help them to meet their interests and achieve their goals. Litigation must be replaced with other and more productive processes.

- ◆ ***Congressional authorizations of significant funds to address endangered species issues on the Missouri River*** – Recent Congressional authorization of funds for recovery of endangered species on the Missouri means that money is available for projects. A number of parties are interested in having projects in their area and receiving funding to implement them. This is an inducement to reach agreements.

Additionally, if concerned governments, governmental agencies and non-FTS stakeholders cannot come together and reach collaborative agreements on recommendations on endangered species recovery activities, involved Federal agencies will have to make decisions to expend the funds with less public input. This is an inducement for parties who want to have a role in recovery activities, to cooperate and effectively engage in the convening and functioning of MRRIC.

- ◆ ***Increasing goodwill among the majority of governments, government agencies and the non-FTS Stakeholders to initiate and work on a collaborative process*** – The assessment interviews indicated a significant, but by far from universal, level of goodwill by parties and willingness to engage in good-faith discussions and problem solving to address recovery issues on the river.
- ◆ ***Some success in building positive working relationships, engaging in effective information exchange and joint education, and developing possible procedural solutions in the Spring Rise process*** – A number of interviewees noted that while participants in the Spring Rise facilitation were not able to reach a consensus on recommendations to the COE, they believed that there was some improvement in working relationships between many of the parties. They noted that talks were civil, information was exchanged in a productive manner, and that they had learned a lot from each other. They also said that they had learned that the process must be strengthened to allow for recommendations to be made when a full consensus cannot be reached.

### **3.2.2 Obstacles**

Listed below are some of the major factors that we have identified that will more than likely work against both the convening and potential success of a Recovery Committee. These must be carefully considered when considering whether and how to convene and structure the initiative.

- ◆ ***Low level of Public Trust in Government and Government Agencies*** – Nationally, there has been a growing distrust of government in general. A number of non-Federal, Tribal and state stakeholders who will potentially be involved in a future recovery Committee hold these views. While they are willing to engage politicians and senior government officials when it serves their interests, they aggressively try to exclude government involvement when it is not. This has been, and will likely be the case in initiating and conducting a collaborative effort.

Historically, the COE as manager of the river has been the target of criticism from a significant number of parties for its river management decisions, and sometimes for public involvement procedures used to gather input. There have been significant hard feelings on the part of multiple parties regarding procedures used for Master Manual revision, as well as continued concerns that the COE will not take public comment into consideration when making future river management decisions.

USFWS is seen by a number of parties as an agency that has made decisions and required recovery actions based on limited or inadequate scientific data. For some parties the credibility of the agency and its personnel is quite low because of advocacy for change that may potentially adversely impact them, which they do not see as supported by reliable data.

- ◆ ***A highly charged national environment concerning the protection and recovery of endangered species*** – Addressing endangered species issues on the Missouri cannot occur in isolation of the broader national debate about environmental protection in general and endangered species in particular. For the past several years, the nation has been embroiled in controversy over whether and how to protect endangered species and the terms of the Endangered Species Act. Supporters of the latter have urged more aggressive application, while opponents advocate for serious weakening if not outright elimination of the Act. A number of the parties who may be involved in MRRIC do not or only marginally support the Endangered Species Act, especially if it is seen to trump other authorized uses. They have and likely will continue to work actively, both within MRRIC and through political channels, to prevent or procedurally obstruct its application or specific actions if they believe that it threatens their interests.
- ◆ ***Increased mobilization of the private property rights movement*** – Debate over protection of endangered species has been coupled with private property rights issues, which have resulted in a polarized situation. A number of parties have equated, rightly or wrongly, protection of endangered species with perceived risks to taking their private property. The framing of this issue in this manner generally results in perceived “either/or” outcomes, and may tremendously hinder finding integrative solutions, at least on issues where private property is at issue.
- ◆ ***A national debate over what constitutes good science and differing applications of the precautionary principle*** – Whether focused on endangered species or other

environmental issues, there are currently significant national conflicts over what constitutes good and acceptable science, and how it can or should be used when making policy, programmatic, or project decisions. On one side of this debate are those who believe that no action should be taken that might harm existing uses unless there is total scientific certainty. This is one way of applying the precautionary principle – take no action that might do harm to existing uses unless there is overwhelming data that would indicate that such action is necessary.

The opposing application of the precautionary principle is that scientific certainty, especially on complex environmental issues where all data are not available or even possible to gather, may not be possible. Nevertheless, these advocates believe that this lack of data should not block preventative action, even under conditions of scientific uncertainty, to avoid potential adverse and irreparable impacts. This is especially the case for endangered species, where “once they are gone they are gone forever.” This view results in advocacy that significant measures must be taken, at least initially, to have a positive impact on desired outcomes – recovery of endangered species. These may later be adjusted through adaptive management, once more information and impacts of actions are able to be assessed.

These two conflicting views regarding good science and applications of the precautionary principle are actively being debated as they apply to Missouri River Basin issues. It should be noted that good data and science will be needed to assess impacts of recovery actions endangered species and other natural resource issues, as well as socio-economic and cultural impacts of various actions.

- ◆ ***Many forms of complexity exist, which combine to make collaboration difficult*** – The relationships among stakeholders are complex, the institutions are complex, the science is complex and the volume of data is very large and challenging to understand. This leads to an increased sense of suspicion and bewilderment among stakeholders, as well as reluctance to make commitments or decisions.
- ◆ ***Lack of conflict resolution expertise and experience in collaborative processes, as well as confusion regarding which strategy – collaboration, delay and resistance to change, a political route, or litigation – will be the most effective, often lead to polarization, escalation and politicization of issues*** – Many stakeholders have conflict resolution skills but others are not accustomed to and therefore less comfortable with participation in collaborative processes. Frequently, when people lack understanding of the process, they are more likely to use the behaviors and approaches they have used in hierarchical structures, political mobilization or litigation. Some confuse collaborative process with other processes (such as participation in public hearings, voting, politics or private sector decision making), which leads to a focus on “winning” and defensiveness rather than creativity and collaboration. Often a strong and influential party with high level political connections can rapidly escalate and move an issue into the political arena both at state and national levels. Once issues have shifted from a collaborative arena to the political one, with Governors, Senators and high level appointed officials taking

public positions on them, it is difficult to de-escalate them and refocus on the underlying interests and solutions that might lead to a better solution. There is every indication that at least some difficult issues faced by MRRIC will experience this rapid escalation of issues into the political arena, making them much more difficult to resolve in the Committee.

It is likely that any collaborative effort that is developed will be conducted in an environment of political lobbying, escalation of complaints about the process or issues being elevated to higher government officials, or threats of (or actual) litigation. Continued actions of this type and to this degree significantly lower the likely success of collaboration and cooperative problem solving because they can polarize issues, narrow possible outcomes to win-lose options, and can badly damage working relationships between parties that are the lifeblood of trust and collaboration.

(Of course, despite these obstacles, the participants in MRRIC can still make MRRIC work, if they determine to commit themselves to work collaboratively within this environment.)

- ◆ ***Historic tensions and asymmetries among the states and Upper/Lower Basin issues, as expressed both in the courtroom and in Missouri River Basin forums*** – Tensions between Upper and Lower Basin states and parties have long dominated relations and decisions concerning the management of the Missouri River. Tensions in MRBA and in the formation of MoRAST are continuing to have impacts on the states' involvement in a collaborative MRRIC process. Roles of the Basin organizations, individual states, rural vs. urban economies and populations, and their interface with MRRIC are anything but resolved. This lack of clarity will inevitably add to the challenges of a future MRRIC.
- ◆ ***Absence of strong and visible institutional leaders and champions*** – Currently MRRIC is an organization without a home and an entity without strong, vocal or active champions. To date, no Federal, Tribal or state government, agency or group of agencies or leader(s) either at the Washington or Basin level, or non-FTS spokespersons, have taken a strong leadership or championing role for MRRIC. To some extent Federal or State agencies are on a tight rope. If they play a strong leadership role, they are likely to be strongly criticized by non-FTS stakeholders of taking over and running the process; if they do not, they may be criticized for not taking initiative and letting the process flounder.

The Tribes and states have been fully involved in their own deliberations and discussions regarding Basin cooperation and the formation of MoRAST. To date they have not reached a common view on how they can cooperate on Missouri River issues, including those related to endangered species. Until that happens, it will be difficult for states as a group to take a unified leadership role or to actively champion MRRIC.

As MRRIC is a Federal initiative to address a Federal law, the ESA, Federal government officials and agencies are in the logical and institutional position to play a leadership role in regard to MRRIC. However, to do this they will need to make a strong stand to clarify and solidify their collective commitment to a collaborative process at the Washington, Divisional and Basin-wide levels, and to take a proactive leadership role as champions of the process. This means visibly and actively advocating for the process, being willing to engage all governmental and non-FTS stakeholders collaboratively, avoiding command and control decision making processes, and defending the process from detractors.

- ◆ ***Misunderstanding of the differences between a broad public participation processes and collaborative decision making procedures*** – During the situation assessment process, a number of stakeholders have called for public participation procedures in which any person who sees him or herself as a stakeholder in the Basin can participate and be directly involved in MRRIC. The CDR Team found a broad spectrum of understanding among all stakeholders regarding the differences between unbounded public involvement processes in which anyone can participate, and more deliberative collaborative decision making and consensus building bodies. The latter, which focus on the development of integrative solutions and agreements rather than providing general public input or preferences, depends on: 1) continuous involvement of members; 2) mutual group education on issues and interests; 3) the development of more sophisticated understandings about common problems and possible options to address them; and 4) group deliberation on and development of integrated decisions that address and satisfy as many interests as possible.

Both broader public involvement and collaborative decision making approaches will be necessary as part of an effective MRRIC process. The initiative should include procedures that allow for broad public input and engagement on issues being addressed. It should also include a bounded and functional group of concerned parties to encourage high involvement. Building on the wisdom of its members as well as the public at large, MRRIC will deliberate, work to reconcile competing interests and reach decisions on integrative recommendations that it can forward to concerned agencies. To achieve this end, concerned parties and stakeholders will need to understand the differences between collaborative procedures and public input and support them both.

- ◆ ***Public efforts to undermine the process, based on serious charges of untrustworthiness of many involved in this process*** – A surprising result of the situation assessment was the presence of multiple strongly held beliefs that the process was being manipulated or that people were not communicating in good faith. A number of respondents in interviews or correspondence with the CDR Team indicated that they felt that others were intentionally trying to take advantage of or harm them, take their land and livelihood, seize the river to make it into a park, or eliminate their interest group or their ability to advocate for their needs. Some felt that parties were forming secret coalitions with each other or that agreements were being forced down their throats. While past history of parties and their interactions

may merit some of these concerns, they may also be more strongly believed than objective circumstances merit.

Additionally, there is a strong dynamic on the part of a significant number of people on all sides to refuse to give counterparts from other groups, or the facilitators or mediators, the benefit of the doubt that they might be operating in good faith. There is often an immediate perception that the other is wrong, badly motivated or is trying to gain advantage, without checking the accuracy of assumptions. These conditions often make parties feel as though they are “walking on eggs,” or will soon be under attack for their beliefs or actions. This dynamic is not conducive to either building trust or to collaborative problem solving.

- ◆ ***Declining civility in non-face-to-face communication*** – With a few exceptions, face-to-face communications among the majority of potential MRRIC parties has been quite civil. However, this has not been the case with e-mails. Many escalatory e-mails have been sent out. These e-mails, some of which have been sent in broadcast format, while often containing important and valuable information, are often framed in inflammatory and judgmental language that is not conducive to the promotion of cooperation, trust and positive working relationships. They generally do not give the benefit of the doubt to recipients and assume negative motivations, rather than checking their assumptions. A way must be found to address this problem or it will continue to adversely affect the relationships between and among parties and the work of the Recovery Implementation Committee.

These obstacles to the successful convening and functioning of MRRIC are significant. They have, and may continue to pose significant barriers to the MRRIC’s coming together as well as to its ability to effectively reach a broad level of support

### **3.3 What is the likelihood of success of a future MRRIC?**

Given the obstacles and opportunities above, what is the probability that MRRIC can be convened and will be successful? The CDR Team believes that the convening of MRRIC will continue to be difficult, but that it will take place. Once MRRIC begins its work, we believe it has the potential to be successful in addressing and reaching agreements on recommendations on some issues, but that it may have major difficulties in handling others.

In the box below, *Prospects for MRRIC Collaboration and Decision Making Success*, we list the areas and issues where we believe that the Committee is more likely to achieve success or modest success, and those where agreement may be more difficult.

|   | <b>Prospects for MRRIC Collaboration and Decision Making Success</b>   |  |   |   |
|---|--|--|---|---|
| <b>Prospects for success in collaboration</b> | Greatest likelihood of success   | Greater likelihood of success  | Lesser likelihood of success  | Least likelihood of success   |
| <b>Type of decisions in the category</b>      | <ul style="list-style-type: none"> <li>• Local recommendations (e.g. how to undertake a local action).</li> <li>• Providing agencies with recommendations about specific issues on ecosystem management (e.g., how to best select sites for habitat restoration)</li> <li>• Recommendations that provide agencies general rather than very specific guidance.</li> <li>• Recommendations or actions to improve MRRIC process through improved processes or locating funding or knowledge sources.</li> </ul> | <ul style="list-style-type: none"> <li>• Regional recommendations (such as affecting a given river reach)</li> <li>• Recommendations about allocation of MRRIC funding</li> <li>• Recommendations that permit the expression of a range of views and options for action</li> <li>• Recommendations intended to stimulate local economies</li> <li>• Decisions to collaborate with other institutions for assistance (such as universities or economic advisors).</li> <li>• Recommendations about assisting a given industry (such as recreation, power)</li> <li>• Recommendations based on independently verified science</li> </ul> | <ul style="list-style-type: none"> <li>• Basin wide decisions that are tied to River interconnection (e.g., Spring Rise releases)</li> <li>• Recommendations that require very specific guidance (e.g., specific numbers or dates)</li> </ul> | <ul style="list-style-type: none"> <li>• Topics tied to national political debate</li> <li>• Distributive decisions (such as water allocation between stakeholders)</li> <li>• Recommendations affecting or seen to affect property rights</li> <li>• Recommendations on matters affected by prior or pending litigation</li> <li>• Recommendations where data is actually weak or politically perceived to be weak</li> <li>• Recommendations about specific changes in the Master Manual</li> </ul> |

### **3.4 Potential Functions and Activities of the Recovery Implementation Committee**

Having addressed feasibility issues, we now turn to potential functions of MRRIC and related components of the initiative. Based on interviews with concerned parties and potential participants on the Committee, the CDR Team believes that the new entity is likely to have much broader functions and activities than reaching agreements on and making recommendations regarding recovery actions on the Missouri. Described below are a range of possible functions that MRRIC might take on. Decisions regarding which of these are appropriate should ultimately be up to the Committee and the concerned Federal agencies once the entity has been convened.

#### **MRRIC functions and activities that do not necessarily require decision making.**

The CDR assessment of interview results suggests that the broad functions of MRRIC, among others, could fall within four categories of action described in the box below, *Possible MRRIC Functions and activities that do not necessarily require Decision Making*, many of which require minimal or no consensus decision making.

| <b>Possible MRRIC Functions and Activities that do not necessarily require Decision Making</b> |  |   |
|--|--|---|
| <b>#</b>   | <b>MRRIC Function/Activity</b>   | <b>Examples or Subject Areas</b>  |
| 1  | <b>Knowledge and data management</b>   | <ul style="list-style-type: none"> <li>• Gather available and relevant data (e.g., habitat locations, flap gate location and elevation, flooding profiles, tribal intake data, etc.)</li> <li>• Assess, filter, improve and report on data and conclusions</li> <li>• Manage knowledge sharing activities (web site, library or electronic library, public presentations)</li> <li>• Assist with and inform independent science reviews</li> <li>• Provide agencies and tribes with data that would not otherwise be available to them by MRRIC's use of local connections and networks</li> <li>• Create and support necessary technical working groups, River reach groups or "issue" networks</li> </ul> |
| 2  | <b>Broad public input</b>  | <ul style="list-style-type: none"> <li>• Undertake broad public input processes</li> <li>• Be a facilitator and supporter of public reporting on Basin issues including awareness, advocacy, public education, and fund raising</li> </ul>  |
| 3  | <b>Provide governments and agencies (Federal, Tribal, state and municipal) with decision support</b> | <ul style="list-style-type: none"> <li>• Respond to broad inquiries (e.g., about funding needs, directions for recovery, changes occurring or needing to occur in the Basin.)</li> <li>• Provide general strategic advice and counsel, solicited and unsolicited</li> <li>• Develop broad lists of options for agencies to consider regarding any specific recovery plan or program</li> <li>• Provide input about suitable "indicators" for monitoring and evaluating recovery actions</li> <li>• Consult concerning the impact of on going or planned actions</li> <li>• Provide agencies with lists of "pros" and "cons" of proposed or ongoing actions</li> </ul>                                       |
| 4  | <b>Empower local communities and States</b>  | <ul style="list-style-type: none"> <li>• Defer MRRIC decision making and delegate certain decisions for dialogue and decision to the local community level, reach or state levels, as opposed to at MRRIC Basin level</li> <li>• Provide technical support to local communities or groups through MRRIC technical working groups</li> <li>• Empower local groups to develop and make recovery proposals (such as communities, municipalities, Chambers of Commerce, River reaches, sub regions, farm groups)</li> <li>• Liaise with and ensure that input is received from groups that are small or not formally participating in MRRIC</li> </ul>  |

As noted above, there are many circumstances when MRRIC will serve as a facilitator and network for gathering the "best thinking of the Basin" and not necessarily as a primary decision maker. However, part of the MRRIC's mandate will be decision making on recommendations on recovery issues and actions. This function and related activities are described below.

**MRRIC functions and activities concerning specific agency action.** MRRIC may, from time to time, make recommendations to the concerned Federal Agency or Agencies on what they should do (i.e., "here is what you should decide"). These decisions may be

qualitative or quantitative, as well as general or specific. Some hypothetical examples follow.

- ◆ Hypothetical examples of qualitative and general decisions:
  - What is the appropriate scope for the initial efforts of MRRIC?
  - What the issues facing MRRIC should get the most immediate attention?
  - What biological and environmental factors are most important to the successful recovery of a species?
  - How will the best locations for habitat recovery be chosen?
- ◆ Hypothetical examples of qualitative and specific decisions:
  - Should Program X be undertaken in a specific River reach?
  - Is habitat restoration better in location A or location B?
- ◆ Hypothetical examples of quantitative and general decisions:
  - What percentage of MRRIC funding is best spent for research?
  - What are the 10 most important River reaches for habitat restoration?
- ◆ Hypothetical examples of quantitative and specific decisions:
  - What funding is needed for Program Z?

**MRRIC functions and activities to express member and Committee perspectives other than by consensus.** In the broad list of non-consensus seeking functions and activities that MRRIC may perform, the CDR Team believes that Committee reports could include many ways for providing agencies with assessments of the best thinking of the MRRIC’s members. We believe these could include the types of reports on MRRIC perspectives listed in the box below, *Possible Forms of MRRIC Reports to Agencies*.

| <b>Possible Forms of MRRIC Reports to Agencies (other than decision recommendations)</b> |  |  |
|--|--|--|
| <b>#</b>   | <b>Activity</b>  | <b>Form of Report</b>  |
| 1  | <b>Knowledge and data management</b>   | <ul style="list-style-type: none"> <li>• Data tabulations and summary</li> <li>• Range of conclusions supportable from certain data and determined by Technical working groups</li> <li>• Request for independent science review of a question</li> </ul>  |
| 2  | <b>Broad public input</b>  | <ul style="list-style-type: none"> <li>• MRRIC reports to agencies on public input</li> <li>• Reports, videos or other materials for public distribution or electronic publication</li> <li>• Tabulations of input on potential impacts of planned agency action</li> </ul>  |
| 3  | <b>Provide agencies (state and Federal) and Tribes with decision support</b> | <ul style="list-style-type: none"> <li>• List of factors to consider in decision making</li> <li>• Report on significant trends regarding recovery</li> <li>• Reports from MRRIC technical working groups</li> <li>• Strategic advice on most promising avenues for Basin and ecosystem recovery</li> <li>• Reports on socioeconomic and cultural factors</li> <li>• Broad lists of options for agencies to consider regarding any specific recovery plan or program</li> <li>• List of suitable “indicators” for monitoring and evaluating recovery actions</li> <li>• Lists of “pros” and “cons” of proposed or ongoing actions</li> </ul> |

The CDR Team believes in light of the above, MRRIC can function in many instances as a container and stimulator of Basin wide best thinking – avoiding the political and positional debates seen in the Spring Rise process.

**MRRIC functions and activities to make decisions on recommendations.** One of the functions of MRRIC will be to make both general and specific recommendations to the concerned Federal agency or agencies on possible recovery actions. More will be said about a proposed decision making process for issues about which MRRIC decides to make decisions later in this report.

#### **Section 4. The Focus and Mandate for MRRIC**

The visions of many interviewees concerning the future focus and mandate of MRRIC are generally shaped by their views of congressionally authorized uses of the Missouri River, other Federal legislation related to its management, their definition of “long-term recovery” and what they believe that it will take to accomplish it. Congressionally authorized uses of the Missouri River, as contained in the Pick-Sloan Plan and Flood Control Act of 1944, include: hydropower, recreation, water supply, navigation, flood control and fish and wildlife. As one Federal agency representative said “*The recovery implementation plan must address all authorized purposes and uses in a holistic manner.*” A representative of a conservation group expressed a similar view, “*Success for MRRIC and ‘recovery’ mean many different things. Not just ESA delisting but also people out fishing and hunting, communities and businesses benefiting from the ecosystem, hydropower revenue and the public being interested in the River.*” A representative of terminal and agricultural interests said “We need to look at ESA recovery but also socio-economic (recovery), as in terminals, recreation and protection of cultural resources.”

As Tribes and stakeholders discuss their hopes and fears for the long term recovery effort of MRRIC, they almost universally focus on four components, the need for: 1) changed attitudes and relationships between and among concerned parties; 2) effective collaborative (and consensus-based) processes; 3) Basin-wide ecosystem level initiatives with greatest emphasis on where recovery efforts were likely to be most successful; and 4) broadly based recovery, in the social and economic sense, affecting communities within the Basin.

***Attitudes and Relationships*** – Almost across the board, interviewees identified and stressed the destructiveness of some interest groups’ attitudes and behaviors towards parties who hold different opinions regarding species recovery and various aspects of river use.

A large majority of interviewees note that if MRRIC is to be successful in any initiatives that are undertaken, those involved must be willing to significantly change some of their behaviors as they interact with those who differ from their opinions and understandings.

Parties will need to listen to one another and step back from old views, positions and tactics, to explore how greater trust can be built. They must also be willing to entertain and explore how interests that are not their own can be recognized and seen as legitimate in balancing uses of the river and minimizing harm to various users, to the greatest extent possible.

A large majority of interviewees note that if MRRIC is to be successful in any initiatives that are undertaken, concerned parties must be willing to significantly change some of their behaviors toward others who feel differently, demonstrating mutual respect while still being clear about their disagreements.

Many interviewees are not sure if major changes are possible, but believe that at least minimal positive shifts in attitudes have occurred. For some, this is all that is needed to begin the process of building greater trust and rapport, which are seen as the minimum preconditions for the beginning of a dialogue.

It should also be noted that a number of interviewees say that they saw some of these changes beginning to occur in the Spring Rise Facilitation.

**Process** – Regarding process, a large majority of interviewees note that adversarial procedures that have been used in the past, and which are currently being considered or used in the present, are probably not the best way to resolve complex river and ecological issues. However, a smaller group stressed that they were not willing to give up their right to litigate if they felt that laws or their rights were being violated. However, this same group also noted that they, too, believe that a more collaborative type process is both desirable and possible.

The words about prospective procedures that came up most in interviews indicated a need to engage in some form of “cooperative problem solving” and to effectively use “adaptive management.” A number of interviewees noted that while the Spring Rise Facilitation did not result in a consensus agreement, it did demonstrate in part that there are procedural options to consider, other than long-term, multi-decade litigation.

The words about prospective procedures that came up most in interviews indicated a need to engage in some form of “cooperative problem solving” and to effectively use “adaptive management.”

Interviewees recognized that regardless of the process that was developed, there must be significant learning from each other, willingness to explore and evaluate diverse ways to achieve mutually agreed-upon ends, and some give and take in a collaborative negotiation process to develop mutually acceptable recommendations. Adaptive management, while a concept that many interviewees supported, was one that almost all parties believe needs to be defined. Many interviewees indicated that a successful process will involve adaptive management as a way to move toward recovery, but such a process must have clear mileposts to measure success, joint agreements on how it will be

implemented and monitored, and early warning mechanisms to identify projected river management changes, while allowing stakeholders adequate time to plan their responses to avoid or mitigate any potential harm.

***Ecosystem Recovery*** – When asked about the meaning, to them, of long-term recovery, the Team heard a variety of responses. Those terms or concepts that interviewees mentioned most frequently were:

- ◆ A process that will promote the general (ecological) health of the river;
- ◆ Development of a concrete strategy for ecosystem recovery, specifically as it relates to the habitat of endangered species, so that they can breed/spawn and recruit with minimal human intervention;
- ◆ Tangible measurable progress toward delisting the targeted endangered species and avoiding the listing of others;
- ◆ A process that will protect and balance various uses of the river, which at the same time will result in the recovery of endangered species; and
- ◆ Utilization of ecosystem enhancement as a basis for enhancing broader economic and social revitalization.

Additionally, interviewees mentioned, but less frequently:

- ◆ Recovery of the three identified endangered species and measures that will prevent other species from being listed;
- ◆ A process to avoid a jeopardy decision by the USFWS;
- ◆ A process that will achieve delisting of targeted endangered species;
- ◆ Recovery of a specific amount, kind and quality of habitat necessary for endangered species recovery, as identified by the USFWS;
- ◆ Tangible and measurable progress toward achieving mutually agreed-upon goals and measures for endangered species recovery;
- ◆ A process to develop and protect the habitat of endangered species so that they can recruit and sustain themselves with minimal human intervention;
- ◆ A process that will protect and balance various uses of the river, which at the same time will result in the recovery of endangered species; and
- ◆ A system-wide process that will protect, promote and recover all important uses of the river – economic, social, cultural and ecological – including endangered species, and will not place one use in higher priority over others or eliminate any existing uses.

#### **4.1 Development of a Possible Focus and Mandate for MRRIC**

Given input from a significant majority of interviewees in situation assessment interviews and insights and models from other initiatives, what might a draft focus/mandate statement for MRRIC look like? Described in the box below is one possible alternative for the consideration by concerned Tribes, agencies and stakeholders.

### ***A Possible Five-Component Focus/Goal/Mandate Statement for MRRIC***

- 1) *To establish an effective and functioning representative committee – which includes representatives of Federal, Tribal, state government agencies and other user and interest groups in the Missouri River Basin – that is mandated to develop and forward recommendations on endangered species issues to concerned Federal agencies;*
- 2) *To have members of the Committee learn from each other and experts on endangered species, river management issues and various uses of the river; engage in collaborative deliberations and decision making; and develop recommendations that have broad based support throughout the Basin on endangered species issues;*
- 3) *To make specific recommendations that utilize adaptive management, for the improvement of the health of the Missouri River ecosystem, with emphasis on the ecosystem and habitat of the three listed endangered species, so that they able to sustain their populations with minimal human intervention and move toward being de-listed as detailed in the Endangered Species Act;*
- 4) *Make specific recommendations for the management and improvement of the Missouri River ecosystem that will prevent additional species from being listed under the Endangered Species Act; and*
- 5) *Make recommendations as described above, and at the same time respect, balance impacts on, and protect other congressionally authorized uses and historic properties, traditional cultural properties and burial sites; maximize social, economic and cultural resources; minimize adverse impacts to the greatest extent possible; and use ecosystem enhancement as a basis to enhance broader economic and social revitalization.*

#### ***4.1.1 Recommendation of the CDR Team regarding the Focus and Mandate of MRRIC***

The Team recommends that the involved Federal agencies and other members of MRRIC utilize the information gained through interviews, polls and research on other recovery initiatives and parameters to draft a potential focus/goal/mandate statement. One possible process is to use the language in the box above as a “single-text negotiating document” and to change or modify it until members of the Committee can agree on a common statement.

The final answer to “what will be the focus and mandate of MRRIC” must arise from the convening agencies and from members of the Committee themselves, both individually and collectively. The ideas and input above should be seen as a temporary starting point

until MRRIC can deliberate and draw its own conclusions about its focus. The MRRIC's description of its focus and mandate will become the centerpiece of the Charter – a document to which that all members of the Committee must commit themselves.

## **4.2 Accountability and Reporting Relationships of MRRIC**

There is a significant level of agreement regarding to which agency, agencies or entities MRRIC should be accountable and report. All interviewees agree that at a minimum, MRRIC should be accountable, report to and make recommendations to the COE. This conclusion is generally based on the COE's legislative mandate as manager of the Missouri River, the terms of the agreement between the COE and the USFWS concerning the BiOp on endangered species on the mainstem of the Missouri, and the fact that the COE is mandated and has the resources to be the implementing agency for Federal recovery-related initiatives.

A significant majority of interviewees also think that that the Committee should report to and make recommendations to both the COE and the USFWS. They see these two Federal agencies as necessary partners in recovery efforts.

A significant majority of interviewees think that that MRRIC should report to and make recommendations to both the COE and the USFWS.

A still smaller, but nonetheless substantial group of interviewees believes that MRRIC should be accountable to all Federal agencies involved in recovery efforts. They suggest that MRRIC should report to the Missouri River Basin Interagency Roundtable (MRBIR) and that these agencies should decide among themselves which recommendations will be accepted and which agencies would act as lead on implementation efforts.

A still smaller group of interviewees suggest that the Recovery Implementation Committee should report to all Federal, Tribal and state agencies involved in Missouri River recovery efforts. These interviewees believed that MRRIC should forward recommendations to any and all appropriate entities engaged in endangered species recovery efforts on the Missouri River.

### ***4.2.1 Recommendations of the CDR Team regarding Accountability and Reporting Relationships of MRRIC***

The CDR Team concurs with recommendations of the vast majority of interviewees and suggests that MRRIC should report to both the COE and the USFWS, as co-partners in recovery efforts, and make recommendations to them jointly. These two agencies must agree on overall recovery efforts for any actions to take place. They must also agree on the adequacy of actions to achieve mutually agreed-upon agency standards. Clearly the COE will have to be the lead agency concerning implementation of recovery efforts.

While the two agencies identified above will have primary responsibility for final decision making and implementation on recovery activities on the mainstem, other Federal agencies have legal mandates and authorities to make decisions in other areas – such as the EPA on water quality issues, the Bureau of Reclamation on water management on tributaries, the National Park Service on stretches of the Missouri designated as Wild and Scenic Rivers and, the Western Area Power Administration on power related issues.

The CDR Team sees that the COE and USFWS have at least two options to formalize their working relationship: First, that the two agencies could sign a joint Memorandum of Agreement (MOA). Second, they might craft a MOA that incorporates and defines the roles and responsibilities of all Federal agencies working on recovery efforts in the Basin.

Under either option, the MOA would describe: 1) the mandate, authority and commitments each agency will make concerning recovery efforts in the Basin; 2) how collective Federal decisions will be made; and 3) financial arrangements that are appropriate or necessary for them to accomplish their joint goals. The long-term effectiveness of MRRIC will be seriously compromised if members of the Federal family cannot collaborate, reach mutually acceptable agreements and carry out designated roles and responsibilities related to recovery implementation.

### **4.3 Authority of MRRIC**

The term “authority” refers to MRRIC’s degree of authority and capacity to make decisions that are final and binding on the Federal agency or agencies to which it reports or on its constituent members (states, Tribes or other entities). There is strong, perhaps universal agreement among interviewees that MRRIC could and should have only advisory authority to make recommendations to the Federal agency or agencies to which it reports. Final decision making and implementation authority rest exclusively with the Federal government or other governmental agencies designated to receive recommendations from the Committee.

There is strong, perhaps universal agreement among interviewees that MRRIC could and should have only advisory authority to make recommendations to the Federal agency or agencies to which it reports.

A question of concern for some interviewees is how much discretion governmental agencies should have to deviate from recommendations made by MRRIC. While many recognized that governmental agencies could not legally delegate their authority to make final and binding decisions, they ask that the Federal agency or agencies to whom MRRIC reports either accept the Committee’s recommendations (especially if they are consensus recommendations), or be required to report back to MRRIC if they do not concur and take different actions, explaining the logic and rationale for their decisions.

#### ***4.3.1 Recommendations by the CDR Team regarding Authority of MRRIC***

The consensus of interviewees that MRRIC have only advisory and not binding decision making authority over agency policies, projects or implementation measures, should be formally recognized by concerned governmental agencies and all concerned parties involved in the Committee. This proviso should be included in any future charter, protocol, bylaws or meeting guidelines of MRRIC.

Parties have suggested that concerned Federal agencies should make a good faith commitment at the first meeting of MRRIC, both verbally and in writing, to fully consider implementing the recommendations made by the Committee, providing they fall within their agency mandates, adequately address a component of recovery of the three endangered species, comply with relevant laws and regulations, and are financially and technically feasible. It will be important for the Committee and concerned agencies to discuss whether the agencies will report back to the group if they do not follow recommendations of MRRIC.

### **Section 5. Potential Structural Components of MRRIC**

Listed below are possible organizational components of a comprehensive MRRIC. They were identified by participants in situation assessment interviews, polls, background research and the experience of the CDR Team in conducting similar initiatives, as commonly described in situation assessment interviews. These include a Plenary Committee, technical committees and other kinds of working groups, stakeholder caucuses, an executive committee and/or chairperson, an executive secretary and secretariat, facilitators, and a public involvement/input process.

#### **5.1 MRRIC Plenary Committee: Function and Size**

While all those interviewed and polled indicated that MRRIC should have some form of Plenary Committee and that its function should be to provide concerned agencies with recommendations on potential recovery actions, there was not a consensus on the size of the Committee or its mode of functioning to provide recommendations. However, there were some clusters of views and a majority opinion on these questions.

In addition to the information the CDR Team received from interviews, we also conducted several surveys during the period between early March and early April of 2006. The surveys were designed to help with recommendations regarding the size and shape of the Committee. Questions and responses from these surveys or polls can be found in Appendix 7.

Interviewees have three key interests regarding the size of the MRRIC's Plenary Committee. First, virtually everyone interviewed believes that MRRIC must have a Plenary Committee and that the membership of this body should be large enough to include and represent the range and diversity of stakeholder views in the Basin. Second, almost all interviewees are concerned that MRRIC be small enough to function effectively (i.e. be able to reach decisions on recommendations that would be forwarded to appropriate Federal agencies for their consideration and implementation). There is a significant concern among a large majority of interviewees that if MRRIC is too large, deliberations and decision making will be cumbersome and the group will not be able to reach agreements.

A third interest of interviewees is that there is consistent attendance by MRRIC members. A majority of interviewees want members of MRRIC to attend all meetings, (to the greatest extent possible) and believe that consistent participation will be critical for the functioning of the Committee, regardless of its size. Consistent attendance will help build ongoing working relationships among members and will assure that all members are up to speed on substantive issues under discussion.

Addressing and satisfying the above concerns, some of which are in tension with each other, may pose a dilemma in the formation of MRRIC.

Addressing competing concerns that MRRIC is both large enough to reflect the spectrum of stakeholder interests in the Basin and at the same time is small enough to allow for effective decision making and consensus recommendations poses a dilemma for concerned parties.

There is not a consensus on how large the Plenary Committee should be. However, there are several significant clusters of views that should be explored.

On one end of the spectrum are a number of individuals who believe that MRRIC should be a very large group with undefined membership. In their view, anyone who has a stake in the river, usually an economic stake, should be invited attend all meetings, participate in discussions and deliberations and engage in decision making. The majority of people who advocate this structure for MRRIC Plenary are from the Lower Basin and represent interior drainage, agricultural, navigation and socio-economic interests. Proponents of this structure believe that participants in MRRIC will eventually form a more stable group over time with a predictable membership based upon attendees' interest in issues under discussion. This group, with a few exceptions who want voting, generally supports a consensus process for decision making. Interviewees in this group did not have specific recommendations regarding how a very large MRRIC, with an unbounded membership and varying attendance would be able to maintain continuity of membership or dialogue or be able to reach decisions that all participants would be able to support. In many ways, this proposed approach to MRRIC Plenary Committee is essentially a public involvement model, which is likely to result in the presentation of a number of individual recommendations from the involved participant and stakeholder groups, as distinct from a

consensus-building process, in which participants deliberate, look at possible trade-offs, and develop integrative recommendations that address competing or conflicting interests to the greatest extent possible. More will be said about public involvement, and how large public meetings for input might be incorporated into the overall MRRIC process, in a section below on this topic.

The next group on the spectrum concerning the appropriate size for MRRIC Plenary is a group of interviewees who wants the committee to be fairly large, 80-100 members, but to have a defined membership. These interviewees and respondents to the polls believe that this number of participants will be necessary for all parties in the Basin to be represented and to allow for multiple at least two members at the table from each stakeholder group. When asked how a group of this size could make decisions, some noted that even a group of this size can make consensus decisions and, if this is not possible, some form of super majority voting might be used. Others proposed that with a large group, more decision making authority might have to be delegated by the Plenary to issue-based working groups, technical committees, groups solving problems on specific reaches of the river, or an Executive Committee.

The majority of interviewees and participants in polls fell on the middle of the spectrum concerning size, and supported a MRRIC similar in size to the Spring Rise Facilitation Plenary Group (approximately 50 members), with the possibility of a few more or less, depending on how membership is allocated among stakeholder groups. Many of these interviewees and people polled would prefer that MRRIC be somewhat smaller than the SR Plenary Group, but recognize that this may not be feasible. Members of this group of interviewees also believe that if the committee is much larger than the SR Plenary Group, it will be unwieldy and less able to reach decisions, while a Committee that is much smaller will not allow for adequate representation.

A majority of interviewees believe that the Committee should be approximately the same size as the SR Plenary Group (approximately 50 members), with the possibility of a few more or less, depending on how membership is allocated among stakeholder groups.

A small number of these interviewees also suggest the possibility of an Executive Committee with some delegated decision making authority, which could perform either coordinating functions or could be given authority to make decisions on some issues between meetings of the Plenary Committee. More will be said about the potential roles of an Executive Committee in a section below.

On the other end of the size spectrum is a small group of interviewees who suggest that MRRIC should be a fairly small committee with between 15 to 35 members. While this group wants MRRIC to be broadly representative, they also want a committee that can make decisions. They believe that this goal will be difficult to achieve with a large group.

Some of these interviewees also believe that states, which represent and have to reconcile the interests of a broad spectrum of their stakeholders, and Tribes should have more

influence in MRRIC than non-Federal, Tribal and state entities, which often represent only single or more limited interests. A number of these interviewees believe that while non-governmental interests should be a part of MRRIC, they should represent a smaller proportion of the whole Committee than was the case in the Spring Rise facilitation. They also propose that many of these interests groups can best participate, have input and be heard through involvement in technical working groups and public meetings.

When interviewees were asked how a small group could be selected and constituted, while still representing the diversity of the Basin, many of them said it might be impossible. They believe that the Basin is so large and has so many interest groups, that many groups will be dissatisfied with and will not accept a small MRRIC. They also noted that many groups would be unable to coalesce and delegate authority to an individual or small delegation that could represent a coalition of similar interests.

### ***5.1.1 Recommendations by the CDR Team regarding size of MRRIC Plenary Committee***

The CDR Team believes that a large Plenary Committee with either a bounded (a limited number of designated members) or an unbounded (any and all interested stakeholders could choose to participate) membership of more than 80 participants, while allowing for the inclusion and participation of a large number of governments and stakeholders in the Basin, will be unwieldy. A group of this size will find it hard to maintain continuity of membership, have focused and in-depth discussions, and it will be difficult if not impossible to make collective decisions that will be supported by a large number of participants. However, the Team does believe that every effort should be made to include public involvement opportunities as part of MRRIC deliberation process, to allow for large-scale participation and input into the process.

Conversely, the CDR Team suggests that a very small MRRIC of fewer than 25 to 35 members will probably be politically and organizationally unacceptable to stakeholders in the Basin. A Committee of this size would not provide adequate representation of the diversity of views and groups in the region. We also believe that based on what many interviewees' tell us of their experience in the Spring Rise Plenary Group, they support and can live with a Plenary of this size and believe that it will be able to function and make decisions.

The CDR Team believes that the membership in MRRIC should probably be similar in size to the Spring Rise Plenary Group, or modestly larger, to accommodate representatives of the diverse interests in the Basin. If members are clearly defined, consistently attend meetings, build positive working relationships, keep up to speed on issues being discussed, can agree on mutually acceptable decision making procedures and adhere to meeting protocols (see below), the CDR Team thinks that a group of up to 75, but ideally slightly smaller might be workable, and would be able to make collective decisions on at least some issues.

If concerned Federal agencies or some form of convening committee for MRRIC decide to have a much larger committee, the Team makes the following suggestions:

- ◆ A larger MRRIC should be used to generate input, but should not necessarily be asked to make collective decisions on all issues;
- ◆ MRRIC could consider breaking issues to be addressed into four categories: 1) whole Basin issues; 2) regional issues (Upper/Lower Basin); 3) state and Tribal issues; and 4) reach issues. MRRIC Plenary could determine which issues should be addressed by the Committee as a whole – such as general policy issues, targeting and prioritizing projects, allocation of funds to specific projects, etc. – and delegate authority to develop recommendations, with parameters, to smaller groups based on region, states, Tribes, reach of the river or technical issues. (The latter should include a representative cross-section of Plenary Group members as well as substantive experts.) The Plenary might only have to review recommendations from subgroups to assure that they had been made within agreed-upon parameters.

If the concerned Federal agencies or some type of a convening committee of MRRIC decide to have a much smaller committee of fewer than 35 members, we would recommend that:

- ◆ The process includes a robust public input and involvement component that will actively solicit input from the broader public, as well as including a strong outreach and education function to inform the public about the deliberations and conclusions of MRRIC;
- ◆ A broad range of stakeholders should be actively involved in technical committees, which should play a strong role in developing proposals for recommendation to the Plenary Committee and ultimately to Federal agencies;
- ◆ The small MRRIC Plenary should consider breaking issues to be addressed by the committee into the same four categories identified for the large group above. The committee should then determine which issues must be addressed by the Committee as a whole, and which could be delegated with parameters to smaller groups based on similar criteria as described above. As in the previous process, the Plenary might only have to review recommendations from subgroups to assure that they had been made within agreed-upon parameters.

## **5.2 MRRIC Technical Committees and other Working Groups**

There is a consensus of interviewees that MRRIC will require a number of technical committees or working groups to support its deliberations and development of its recommendations. Interviewees indicated that these groups should be created on an as-needed basis and have defined mandates, members, and durations for operations. A number of interviewees stress that members of these groups should be experts in their fields – by formal training, profession, or experience – and should not be open to those merely interested in the subject matter but without specific areas of expertise. A

significant number of interviewees suggest that provisions should be made to address any problems involving members of technical and other committees who are either not qualified or impede the work of the group.

Interviewees emphasize that members of these sub-groups (technical committees and working groups ) should be experts in their fields – by formal training, profession, or experience – and membership in the sub-groups should not be open to people merely interested in the subject matter but without specific areas of expertise.

### **5.3 Stakeholder and Governmental Caucuses**

A number of interviewees suggest that various non-Federal, Tribal or State stakeholder interest groups and governments or government agencies with representatives on MRRIC should form caucuses around similar interests of concern. They note that the creation of caucuses will likely broaden participation in the process, enhance discussions and deliberations; and help develop common views for stakeholder groups on issues, options and proposals under discussion; and broaden opportunities for participation and input into the process. Some Federal, Tribal and state governments or their agencies have formed or are in the process of forming groups that can serve as caucuses. Some non-Federal, Tribal or state stakeholder interest groups also have associations, forums or meetings that may be able to serve these functions.

Stakeholder and Governmental Caucuses – Groups with representatives on MRRIC should form caucuses to broaden participation in the process, enhance discussions and deliberations and help develop common views for their stakeholder group on issues.

It should be noted that caucuses can be formed in a variety of ways and around diverse issues. They may be created by parties with similar goals or interests – such as fish and wildlife, interior drainage, or navigation. They may also be formed by either geographic entities, such as the Upper and Lower Basin, or by parties who reside in the same state. A few interviewees noted that it is often easier to organize caucuses by state because of the geographic proximity of potential members, than it is to organize by interest with members spread across long distances in the Basin.

### **5.4 Executive Committee**

A small number of interviewees suggest that an executive committee should be formed to help organize and guide the activities of MRRIC. This would be especially helpful in the case of a large Plenary Committee.

Some believe that an executive committee might be useful in guiding the overall process by helping to plan for and focus discussions, package recommendations and act as liaison between the full Committee and appropriate agencies. Others suggest that the executive

committee could or should be given significant authority and be empowered to break deadlocks and make recommendations to appropriate agencies if a consensus can be not reached by MRRIC Plenary. The issue of representation on a small executive committee has also been raised. People wonder if MRRIC could agree on giving substantial authority to such a small number of participants before it begins functioning and building trust among its members.

## **5.5 Executive Secretary and/or Secretariat**

A few interviewees recommend that in the long-run, for MRRIC to be fully functional, it will need an executive secretary and secretariat to carry out administrative, logistical and financial tasks. However, those making this recommendation indicate that having this role and body in place will not be necessary to get MRRIC started. A number of interviewees indicate that initial administrative and logistical arrangements should be handled by the facilitation team hired to assist with MRRIC convening process.

## **5.6 Chairperson(s)**

A small group of interviewees, largely from Federal and state agencies, suggest that MRRIC should have a chairperson or chairpersons. One Federal interviewee indicated that he believed that it should be a senior military or civilian official from the COE Division Headquarters or the Omaha District. He indicated that the COE had the legal mandate to lead on recovery efforts and should play a leadership role on MRRIC. He also noted that the presence and full participation of a senior leader from the COE will demonstrate the agency's commitment to the process, providing MRRIC direct access to high level agency decision makers, assuring that the Committee will have authorized agency views regarding sideboards on issues under discussion, and helping to assure that recommendations are fully considered, and, when appropriate and feasible, implemented by the COE.

Other interviewees, all from states, recommend that one or more co-chairs be selected by MRRIC members or appointed with the concurrence of all Federal, Tribal and state governmental representatives. They feel that chairs or co-chairs should be widely respected and independent individuals who are either members of MRRIC or respected outsiders. Some suggested that if chairs are appointed, the first chair should not be from the COE, in order to assure independence of this role and to build trust for the process among MRRIC members. However, some felt that a senior leader of the COE could serve as chair later in the rotation once the process is underway.

State interviewees generally view the role of a chair as the formal and designated spokesperson for MRRIC, a person who could represent them in Washington or with individual states, to brief Congressional leaders, agency heads or Governors on the activities of the Committee. This individual could also have influence among Committee

members and could be helpful in forging a consensus. State interviewees also saw the Chair working closely with professional facilitators in the design of agendas and meetings, which the latter would facilitate.

If a chair is necessary to help convene MRRIC, this small group of interviewees said that all Federal, Tribal and state governmental agencies would need to agree on the candidate who would initially be appointed as well as his or her role/function and term of office.

### ***5.6.1 Recommendations of the CDR Team regarding an Executive Committee and Chairpersons***

The decision as to whether MRRIC should have an executive committee, an executive secretary and/or secretariat, or a chair, and what roles they might play, should rest with MRRIC, to be determined once the Committee is underway.

## **5.7 Facilitators**

Interviewees generally agreed that MRRIC meetings should be facilitated and that professional facilitation will be needed, at least in the beginning, to get the process underway and to keep the group on track. Professional external facilitation was recommended because interviewees did not think that any potential member of MRRIC would be seen as neutral or impartial enough to serve in this role, have the trust that would be required from a broad spectrum of those involved, have the time necessary to perform the task or have requisite process expertise to work with such a large and diverse group.

Many emphasized that the facilitation process must be strong and transparent. This includes facilitators having a widely understood, transparent and collaborative plan for developing agendas and conducting meetings, regular and ongoing two-way communication with MRRIC members, and a way of taking and disseminating meeting notes. It would also include facilitators consistently assuring adherence to meeting protocols by group members, helping the Committee stay on track and not allowing individuals or small groups to dominate and/or take over meetings.

Interviewees generally agreed that MRRIC process should be facilitated and that professional facilitation would be needed.

Federal interviewees emphasized the need for the facilitation team to provide administrative and logistical support to MRRIC, including making arrangements for meeting space, sending out meeting announcements, distributing pre-and post meeting materials, and management of a web-site. Several interviewees suggested that verbatim minutes be taken by a professional stenographer or that all meeting proceedings be tape recorded.

### ***5.7.1 Recommendations of the CDR Team concerning Facilitation***

The Plenary Committee of MRRIC should be professionally facilitated, at least at the beginning of the process. At some time in the future, the Committee may decide that it can be self facilitating, but at this time many interviewees perceived that it would be difficult to find potential members of MRRIC who would have the trust of the group and requisite skills to provide process assistance.

CDR also recommends that in the future, consideration be given to securing services of local facilitators to facilitate technical committees, other working groups or reach – based initiatives. Involvement of local facilitators may help lower costs, build local capacities and promote a sustainable Committee process.

Prior to convening MRRIC, it will be important for the Federal agencies and representatives of all other potentially involved parties, to meet and decide how facilitation should and will be conducted for MRRIC in the future. They should define common expectations, tasks the facilitators should perform, and determine who or what entity should facilitate the future process. This discussion should include an assessment of the facilitation services provided to date by the US Institute and the CDR Associates Team.

If past history is a guide, convening and facilitating MRRIC in the next few months and in future years will not be easy, either for the parties or any facilitator(s) providing assistance for the initiative. Multiple competing groups; significant politicization and polarization over a number of major issues; significant disagreements over membership process and decision making; political maneuvering by potential parties or MRRIC members in Washington and with senior elected and appointed leaders; and low levels of trust among potential participants are substantive, procedural, structural and relationship problems that will be faced by any mediator or facilitator whose services are secured to assist in the process.

For the facilitation process to be effective and have any likelihood of success there must be significant overt support by the convening Federal agencies and other involved governments and non-FTS stakeholders for both the facilitation process and any facilitator(s) who are selected to provide third-party services. Overt support means public and verbal acceptance, support for and defense of the process, and confirmation of the facilitators by a critical mass of concerned parties, and a commitment to actively work directly with the facilitators in a collaborative and cooperative manner. Recommendations should be given in a constructive manner and disagreements handled respectfully.

Part of the future MRRIC structure should be a mechanism and procedure to directly raise and handle any concerns Committee members have about the performance of the facilitators, and to address and resolve them in a timely and amicable manner.

## **Section 6. A Robust Public Involvement and Input Process**

Many interviewees stress the need for MRRIC process to be inclusive and have diverse ways for members of the public and all interest groups/organizations and Federal, Tribal, or state governmental agencies (including those not directly involved in MRRIC deliberations) to be informed about and have input into the process. Interviewees stress the need for a robust public involvement process throughout the Basin.

The process should include regular public meetings and workshops with a variety of structures and formats to solicit high quality input and disseminate information about the work of MRRIC. It should also include multiple ways that data on the work of MRRIC can be widely disseminated, such as newsletters, regular e-mails, web dialogues and a dedicated website.

In addition to the open meetings of MRRIC (a portion of which should be reserved for public input), regular public meetings should be scheduled throughout the Basin. The structure, format and procedures for these meetings should vary and be carefully crafted to (1) assure that participants are able to speak comfortably and openly on their issues of concern; 2) allow for formats in which participants can engage in dialogue rather than only making short position statements at a microphone, (3) establish and enforce guidelines to promote safe, respectful and responsible participation, (4) provide educational components to inform the public about the work of MRRIC, and (5) allow for both written and verbal input or advice to the Committee.

Further, the outreach process should similarly be carefully designed to bring out the diverse interest groups in a particular area and avoid domination by one sector. This will require well-designed website announcements, notices in local news media, and the participation of MRRIC members as a whole. Overall, the public involvement plan must be one which members of MRRIC have, themselves, created and one to which they can be fully committed.

A number of interviewees stressed the need to create a public communications committee and communications plan that identifies various key audiences (Congressional delegates, Governors, state legislatures and legislators, Tribal leaders, etc.), specifies activities to keep them informed about the Committee's deliberations and recommendations, and includes strategies to gain their support for the initiative.

### ***6.1.1 Recommendations of the CDR Team regarding public involvement and input process***

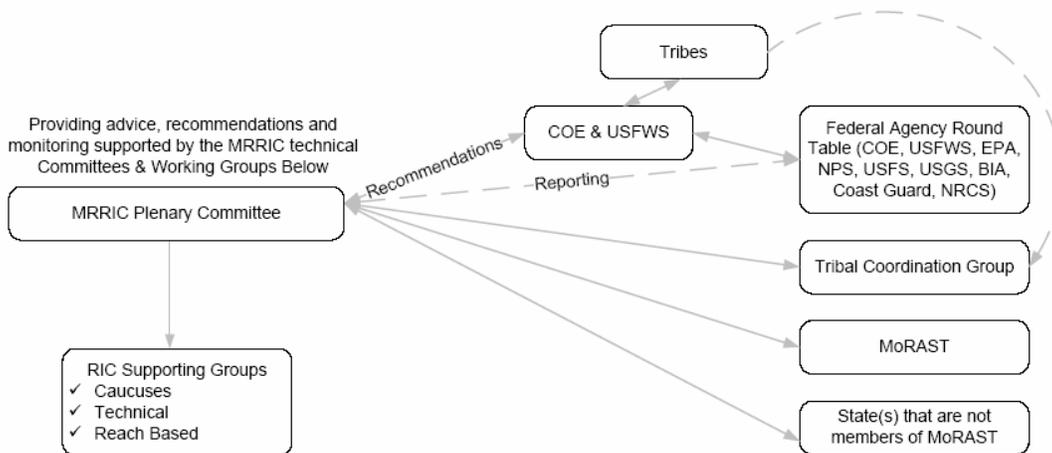
CDR concurs with all of the above recommendations. Having a strong and effective public involvement component of MRRIC process will be a significant step toward meeting the needs and interests of stakeholders who advocated open membership for the

Committee, as well as providing forums for input, questions and answers and effective means to disseminate information on the work of the Committee.

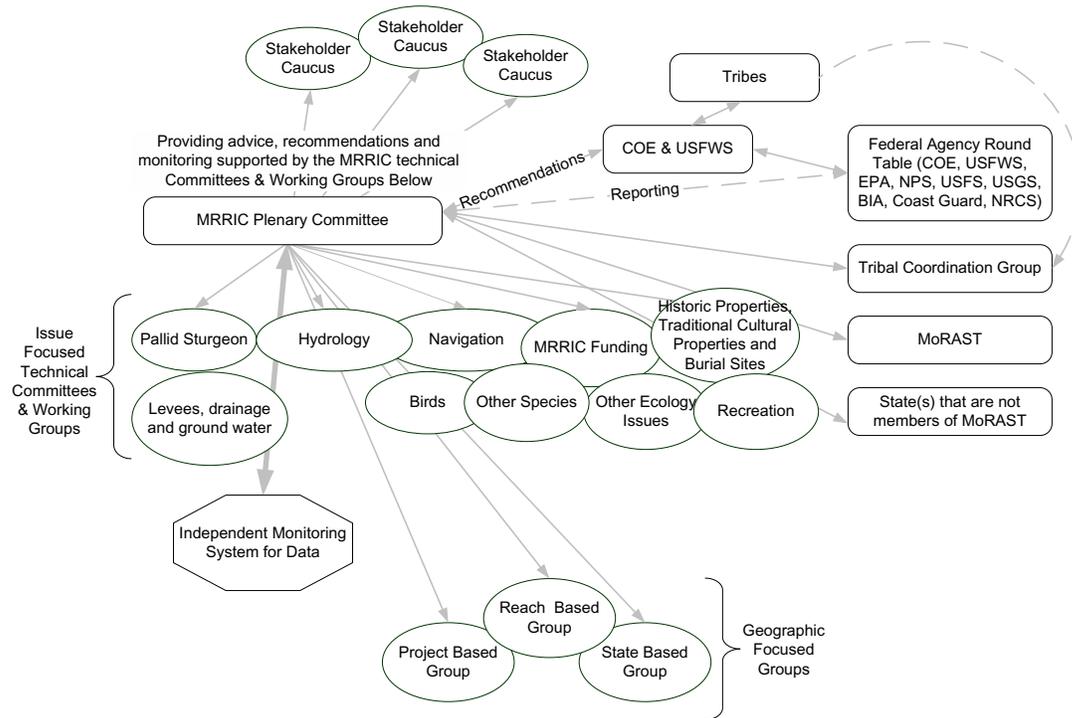
## Section 7. Possible Structure for MRRIC

Based on interviewee and survey input on possible components of a comprehensive MRRIC, there are a number of possible options for its structure. We have set forth in Diagram 1, below, an illustration of one possible option that sponsoring Federal agencies and members of MRRIC can use as a basis for discussion on the future organizational architecture of the new entity. Diagram 2 shows greater detail by including possible Working Groups, caucuses etc.

**Diagram 1: Potential Organizational Structures for MRRIC**



**Diagram 2: Potential Detailed Organizational Structures for MRRIC**



## 7.1 Membership of MRRIC

Potential membership for MRRIC was a significant focus for both situation assessment interviews and subsequent polls. The assumption is that there must be adequate representation of the range of non-FTS and government interests in the Basin, that measures must be taken to assure that all interests have an opportunity to have input into the process, and that concerned parties can be involved at some level in deliberations.

While a group of potential participants in MRRIC advocate totally open Committee meetings with no limits on size or formal membership, the majority of interviewees indicated that they preferred to have a Committee with defined members and some degree of balance between the numbers of representatives for each of the interests in the Basin. This section outlines potential membership categories and organizations that interviewees and those responding to polls believe should be members of MRRIC, and how members might be identified, nominated, selected and appointed.

## 7.2 Broad Categories for Membership in MRRIC

One issue of concern to the vast majority of interviewees was the level and kind of involvement of Federal, Tribal and state governments and non-FTS stakeholders in the

future MRRIC. One small group of stakeholders, one member of which represented a Federal agency and the others agricultural interests in the Lower Basin, recommend that MRRIC be composed exclusively of non-Federal, Tribal and state (non-FTS) interest groups, with the possible the exception of Tribal participation if Tribes decided they wanted to do so. In this membership model, all other groups, Federal agencies, and states would be either *ex officio* members or observers. The logic and rationale for this view is that non-FTS stakeholder groups are in the best position to know and be responsive to the issues and concerns of people in the Basin, and that they should have the right and authority to develop and make recommendations to the government on how to address them without undue influence by states or Federal agencies. Advocates of this position are concerned that states or Federal agencies could easily overpower other stakeholders and unduly influence decision making on recommendations. A small sub-group of these interviewees believe that Federal and state agencies should not even attend the meetings of MRRIC, and should not be involved in any of the Committee's deliberations or decisions on recommendations.

Another subgroup of interviewees, generally from state governments, feel that states and Tribes should play a stronger role and have more authority in MRRIC than these governmental entities did in the Spring Rise Facilitation.

In contrast to the views expressed above, a large majority of those polled and interviewed believe that there should be broad representation of all Federal, Tribal and State governments and non-FTS stakeholders in MRRIC, as was the case in the Spring Rise facilitation. As one interviewee representing terminal operators said, "we need Basin wide participation from all interest groups, with no specific interest group having more clout than others."

### **7.3 Specific Categories of Membership for MRRIC**

Within the broad categories of Federal, Tribal and State government and non-FTS membership in MRRIC are categories of membership that represent specific governmental and non-FTS interests in the Basin. Beyond identification of the size and broad membership of MRRIC, this report must also address which specific categories of interests or organizations from which members should be recruited and selected.

Past experiences of many potential MRRIC participants initially prompt them to recommend that members be recruited from groups, organizations or agencies with the following characteristics: 1) organizations with missions or activities related to one or more of the authorized purposes of the COE's enabling legislation for the Missouri River; 2) organizations with ESA or environmental concerns related to the river, and 3) Tribes located in the Basin. However, on deeper reflection, a number of interviewees note that there are interests and concerns in the Basin that are either not included or do not easily fall within the above potential categories for membership. The membership categories of the Spring Rise Facilitation are an alternative model for categories, which many interviewees supported.

A large majority of those interviewed believe that the broad representation of groups, such as was the case in the Spring Rise facilitation, is the membership model that should be followed for MRRIC.

To test the viability of specific membership categories, the CDR team made some tentative recommendations in the Draft Situation Assessment Report and raised this issue at the February 28, 2006 meeting at which the draft was publicly presented. There was not a consensus among attendees on the membership categories.

After the meeting, CDR sent out three polls to potential members of MRRIC soliciting their input for possible specific membership categories. The results of these polls and answers regarding membership categories may be found in Appendix 7. Subsequently, a mixed group of non-FTS stakeholders met and drafted recommended MRRIC membership categories. There was no consensus among these three efforts – interviewees, respondents to polls, or participants in meetings of potentially involved parties regarding membership categories.

### ***7.3.1 Recommendations of the CDR Team for Categories of Membership in MRRIC***

Establishing membership categories for MRRIC and especially for potential non-FTS stakeholders will be critical for the convening of the Committee. Without some categories that identify interests to be included on the Committee and provide some standards and criteria for identification, nomination, selection and appointment, it will be difficult for the convening to move forward.

The CDR Team concurs with the majority view of interviewees regarding the desirability of broad participation in MRRIC. The Committee should have members from non-FTS stakeholder groups, and from Federal, Tribal, state and municipal governments. We believe that the precedent of an inclusive process in the Spring Rise Facilitation has been established and the majority opinion of interviewees in this situation assessment will not allow for anything less. Limiting participation exclusively to non-governmental stakeholders would be politically unacceptable for a number of key stakeholders in this process.

Based on the numerical results of the first and second poll, and comments received regarding proposed categories, the CDR Team proposes to accept all categories in the poll which received over 80% acceptance level and to make a number of revisions within each category as suggested by poll participants. (See Appendix 7 for complete data.) These revisions are based on authorized uses of the river, other Federal laws that are applicable to river management, and interests identified by stakeholders. We recommend the following categories for non-FTS stakeholders:

**Flood Control** (Flow related issues related to flood control, interior drainage, bank stabilization and sedimentation as represented by interest groups or organizations with the above areas of focus and governments and governmental agencies mandated to address these issues)

**Irrigation** (Water for agriculture and ranching as represented by riparian landowners, irrigators, irrigation districts or organizations representing agricultural interests and governments or governmental agencies mandated to address these issues)

**Hydropower** (Hydropower as represented by either or both public and private power interests and governments or governmental agencies mandated to address these issues)

**Water Supply and Quality** (Municipal, industrial (including water for cooling power plants), rural water supply and waste water discharges as represented by municipalities and other organizations with water supply and quality as a major focus and governments and governmental agencies mandated to address these issues)

**Navigation and Terminals** (Navigation, terminal and other socio-economic interests related to shipping on the river as represented by organizations with this focus and governments and governmental agencies mandated to address these issues)

**Fish and Wildlife and Endangered Species** (Non-endangered and endangered species as represented by non-governmental conservation and environmental interest groups or organizations and governments or governmental agencies mandated to address these issues)

**Recreation** (Recreation and river-based tourism interests including but not limited to anglers, hunters, hotel/motel/lodge owners, trailer/tent camps, tourism representatives, etc. as represented by interest groups or organizations with this focus and governments and governmental agencies mandated to address these issues)

**Socio Economic Development** (Broader economic development issues in the Basin as not already represented and advocated by membership categories above, as represented by *regional organizations* such as Chambers of Commerce, regional councils of governments, Conservation Districts/Natural Resource Districts or other groups as decided by MRRIC)

## **And Perhaps:**

**Historic Properties, Cultural Resources and Burial Sites** (Non-Tribal and Tribal focus as represented by non-governmental interest groups or organizations with this focus and governments and governmental agencies mandated to address these issues.) Note: Tribal interests in this area may be represented by Tribal members of MRRIC, including the Tribal Historic Preservation Officers; state interests may be represented by state representatives and/or State Historic Preservation Officers or other state representatives.

**At-Large** (To be decided by MRRIC after it has begun meeting, perhaps including groups or individuals who represent bridging interests or views in the Basin)

## **7.4 Allocation of Seats and Balance among MRRIC Membership Categories**

Interviewees in the situation assessment and in two polls were asked their views on apportionment among various membership categories of representative members of MRRIC, in order to achieve adequate balance of views and interests in its deliberations. Some of their responses included:

### **7.4.1 For non-FTS Stakeholders**

Among the suggestions for numbers and allocation of seats/representatives for non-FTS stakeholders are that membership be:

- ◆ Based upon the population of the states;
- ◆ Based upon the number of members of a state's congressional delegations;
- ◆ Based upon the number of parties potentially impacted by changes in Basin uses;
- ◆ Equal in numbers between Upper and Lower Basin;
- ◆ Based upon the COE's authorized uses;
- ◆ Based upon the COE's authorized uses, Federal ESA/environmental mandates and according to the COE's Tribal Trust responsibilities; or
- ◆ Based on membership categories identified in the situation assessment, with a somewhat equal balance among all non-FTS stakeholder or interest groups and governments, allowing members to adequately represent their group or institution's views and have a roughly equal voice in deliberations.

### **7.4.2 For Federal Agencies**

- ◆ Each concerned Federal agency should have one representative involved in the process, but level of involvement needs to be defined by the agencies.

- ◆ Federal agencies should not be involved in the process at all so balance with them is not an issue.
- ◆ Federal agencies should be involved in MRRIC but not in decision making on recommendations. If this is the case, numbers of Federal members is not as important an issue.

#### **7.4.3 For Tribes**

- ◆ All tribes should be invited to participate in MRRIC and each should decide how they wish to engage.

#### **7.4.4 For States**

- ◆ Each state should have between one and three representatives on MRRIC, each of whom should represent the range of interests in their state.
- ◆ Each state should have one representative, who will work internally within his or her state caucus to reconcile competing interests in the state, and represent the state's view on issues under discussion with one voice.
- ◆ Each state should have two representatives and each should be allowed to advocate for the interest that they represent.
- ◆ Each state should have two representatives but they should work together to the best of their abilities to speak with one state voice.

In summary, interviews with representatives of Federal and state governments and agencies were the most definitive of all potential MRRIC members regarding the number of seats each wanted on the Committee. Each state wanted two representatives except Wyoming, which agreed, at least initially, to have only one representative.

Tribes and Mni Sose advocated that each of the 28 Tribes should have one seat on MRRIC. Interviews and subsequent conversations with Tribal leadership and Tribal government officials indicated that the Tribes will meet both individually and together to discuss how each wishes to participate.

Interviews, polling results, and discussions among the ad-hoc non-FTS group were all inconclusive regarding the preferred number of seats, their allocation and balance among non-FTS stakeholder groups. The only major agreement was that there should be a somewhat equal balance among non-FTS members of MRRIC, allowing representatives of each membership category to adequately represent their stakeholder group and have a roughly equal voice in deliberations.

#### **7.4.5 Recommendations of the CDR Team regarding representation and balance on MRRIC**

If MRRIC is to adequately represent the range of interests in the Basin and have some balance of views when deliberating and making recommendations, there must be a decision regarding the number and allocation of seats for prospective membership categories and their representatives, as well as a baseline for the projected total number of members.

Based on input from the majority of interviewees for MRRIC regarding the preferred size, the CDR Team has established an initial number for overall membership of between 50 and 75 members.

We also believe that Federal, Tribal and state representatives must be on the Committee, and that Federal agencies must be clear about their role in deliberations and decision making on recommendations.

Within the 50-75 number of membership slots, CDR recommends that 30 seats be allocated to non-FTS membership categories. This will make non-FTS stakeholders the largest single group on MRRIC.

CDR polled non-FTS stakeholders separately regarding their preferred allocation of seats within the 30 non-FTS category and has carefully examined the results of interviews and the polls. We also looked at the recommendations of the ad-hoc stakeholder working group regarding on this issue.

Different levels of participation and input by non-FTS stakeholders in the polls and an average of their responses do not result in fair or balanced numbers for allocations of seats. Preferences of individual stakeholder groups regarding their recommended number of seats for their own group results in a total number of seats much greater than 30.

Therefore, the CDR Team recommends the following *preliminary* allocation of seats for MRRIC, to convene its first meeting. At this meeting, participants can determine if the existing categories and numbers of seats per category are acceptable, or if they should be adjusted to revise the composition of the Committee. (The Committee may also decide to try out this proposed allocation for a number of months or meetings, prior to review or adjustment.)

For non-FTS representation, the CDR Team recommends the following allocation and balance of seats and timing for appointment, as a starting point when MRRIC meets initially:

| <b>Preliminary Allocation of non-FTS Stakeholder Seats (First Meeting of MRRIC)</b>                  |   |  |  |  |
|--|---|--|--|--|
| <b>MRRIC Membership Category</b> (See detailed description above for sub-interests in each category) | <b>Total Number of non-FTS Representatives at the First Meeting</b> | <b>Suggested Number of suggested non-FTS Representatives from Upper Basin States</b> | <b>Suggested Number of suggested non-FTS Representatives from Lower Basin States</b> | <b>Timing of Selection and Appointment</b>   |
| <b>Flood Control</b>   | 4   | 1  | 3  | Prior to first meeting of MRRIC  |
| <b>Irrigation</b>  | 3   | 2  | 1  | Prior to first meeting of MRRIC  |
| <b>Hydropower</b>  | 3   | Open to stakeholders   | Open to stakeholders   | Prior to first meeting of MRRIC  |
| <b>Water Supply and Quality</b>  | 4   | Open to stakeholders   | Open to stakeholders   | Prior to first meeting of MRRIC  |
| <b>Navigation and Terminals</b>  | 3   |  | 2+1*   | Prior to first meeting of MRRIC  |
| <b>Fish and Wildlife and Endangered Species</b>  | 3   | Open to stakeholders   | Open to stakeholders   | Prior to first meeting of MRRIC  |
| <b>Recreation</b>  | 3   | 2  | 1  | Prior to first meeting of MRRIC  |
| <b>Socio Economic Development</b>  | 3   | Should represent a broad reach of the river or the whole Basin                       | Should represent a broad reach of the river or the whole Basin                       | Nominated/appointed at the first or subsequent meeting once selection process is agreed on   |
| <b>At-Large</b>  | 3-4   | Should represent a broad reach of the river or the whole Basin                       | Should represent a broad reach of the river or the whole Basin                       | Nominated/appointed at the first or subsequent meeting if parties approve additional non-FTS representation and selection process is agreed on |
| <b>Historic Properties, Cultural Resources and Burial Sites</b>                                      | 1   | Should represent a broad reach of the river or the whole Basin                       | Should represent a broad reach of the river or the whole Basin                       | Nominated/appointed at the first or subsequent meeting if parties approve additional non-FTS representation                                    |
| <b>Total – 30</b>  |   |  |  |  |

\*Possible representation by out-of-Basin interests, i.e. Mississippi River.

The logic for the above allocation is as follows:

**Flood Control (4)** – Category contains multiple sub interests that must be represented and will also be represented by some states and one Federal agency.

**Irrigation (3)** – Category requires Upper and Lower Basin representation. Lower Basin representative will probably have cross-cutting interests with Flood Control interests. Multiple states and one Federal agency will also advocate for this interest.

**Hydropower (3)** – Category probably requires Upper and Lower Basin representation and the interests of this group will also be advocated by some states and at least one Federal agency.

**Water Supply and Quality (4)** – Category contains multiple sub interests that must be represented.

**Navigation and Terminals (3)** – Category must represent navigation and terminals and will also be represented by some states and one Federal agency as an authorized use.

**Fish and Wildlife and Endangered Species (3)** – Category will be advocated by non-FTS stakeholders as well as some state representatives and one Federal agency.

**Recreation (3)** – Category requires Upper and Lower Basin representation and will also be represented by states and multiple Federal agencies.

**Socio Economic Development (3)** – Category encourages representation and consideration of a regional or Basin-wide perspective on these issues.

**Historic Properties, Cultural Resources and Burial Sites (1)** – Category represents non-FTS representative but representation by a non-FTS stakeholder is subject to approval of MRRIC members.

**At-Large (3-4)** – Category provides for later appointment, with the entire group’s recommendation, of respected statespersons with regional or Basin-wide perspectives, or these seats may be used later for reallocation of the above membership categories.

#### **7.4.6 Federal Agencies**

**Federal Government and Agencies** – Regarding Federal government representation on the Committee, in general, we recommend one seat per agency. The agencies individually and collectively must decide which agencies will be directly involved on the Committee, as opposed to active involvement in a Federal caucus, and what role they will play in deliberations and recommendations.

#### **7.4.7 Tribes**

**Tribes** – All Tribes should have one seat per Tribe on MRRIC. Tribes must individually and collectively determine how they can best participate in meetings of MRRIC and any affiliated committees.

#### **7.4.8 States**

**States** – The Team recommends that the states should each have two representatives, with the exception of Wyoming which will have only one, and that state representatives should, to the best of their abilities, speak with one voice regarding the state’s interests, concerns and positions. This allocation results in 15 seats on MRRIC for states.

### **7.5 General Characteristics and Qualities of Future MRRIC Members**

Interviewees are in significant agreement on the characteristics and qualities of people who should be representatives of key Basin stakeholders on MRRIC. Many of these views were shaped by interviewee observations of the functioning and behavior of members of the Spring Rise Facilitation, and their understandings of what promoted or hindered effective interaction and work between and among members.

Many interviewees noted that the ideal MRRIC member would take a balanced view toward issues under discussions. As one state representative said, “Err on the side of including people who are trying to balance interests; not trying to push or advocate for a single interest.”

A summary of comments on characteristics and qualities of future MRRIC that were identified by interviewees are described below.

### **Desirable Characteristics and Qualities of Future MRRIC Members**

- ◆ Be formally designated as a representative of and spokesperson for Federal, Tribal, and state agencies, or non-Federal, Tribal or State stakeholder group in the Basin who have the authority to represent a geographic or political constituency or a significant number of members who are concerned about or who have a “stake” in the resolution of issues that will be the focus of the Committee;
- ◆ Be able to commit the time and energy required to fully engage in the process and to consistently attend all MRRIC meetings (except in the case of emergency);
- ◆ Have an alternate who either attends consistently or is fully briefed on issues under discussion, so that s/he is fully informed and ready to step into the process if the regular member is unable to attend;
- ◆ Have extensive knowledge, expertise and interest in issues to be discussed by MRRIC;
- ◆ Be willing to support, adhere and be accountable to behavioral and meeting ground rules or guidelines approved by the members of MRRIC;
- ◆ Be willing to engage in cooperative and collaborative communications and behaviors between and among other members of MRRIC, related agencies and facilitators, both during MRRIC meetings and in communications or interactions between meetings;
- ◆ Be thorough and conscientious in advance of meetings, reading all background material provided and being prepared to discuss them at meetings;
- ◆ Be able to effectively articulate and communicate orally and/or in writing the interests and concerns of stakeholders, organizations or agencies whom s/he represents;
- ◆ Be able to listen to and be willing to try and understand the interests and concerns of stakeholders other than those whom the member represents, particularly those with whom s/he has the least in common;
- ◆ Be willing to engage in good faith and work toward development of recommendations that satisfy as many stakeholder interests as possible and that “do no harm” or minimize adverse impacts to other members or stakeholders;
- ◆ Be willing and able to brief and consult with their constituents or organizational leaders on a regular basis, to apprise them of the status of MRRIC negotiations and solicit their input;
- ◆ Be able to garner and mobilize constituent, organizational or political support for issues under discussion, or decisions on recommendations reached by MRRIC;
- ◆ Be willing to consider a commitment to suspend, for a defined period of time, any adversarial communications or actions which might inhibit or jeopardize the functioning or work of MRRIC; and
- ◆ Be willing to inform MRRIC members in a timely manner if s/he or his/her government, agency, organization or constituents will be or are taking unilateral actions (such as lobbying, issuing press statements, or initiating litigation) that may result in tensions, create conflicts or jeopardize the functioning of MRRIC or its members.

### ***7.5.1 Recommendations by the CDR Team regarding the Qualifications of MRRIC Members***

The CDR Team agrees with the “Desirable Characteristics and Qualities” identified by interviewees (above). Although it is critical that all those involved with the Recovery Committee process feel comfortable debating issues and disagreeing with their colleagues they must also be firmly committed to the process and not undermine it at Plenary, technical or work group meetings or “away from the table.” This would include inflammatory “spam” email.

### **7.6 Levels of Authority of MRRIC Members within their Organizations or Agencies**

As mentioned above, virtually all interviewees see MRRIC Plenary group as a policy, programmatic and project advisory body. Most suggest that individual members of the Committee should hold senior level positions in their governments, organizations or agencies; be knowledgeable about the issues; and have authority to influence and commit to a range of recommendations. This would indicate membership of senior leaders and personnel from Federal, Tribal, and state agencies, and executive director levels from non-Federal, state and Tribal government organizations.

Interviewees strongly indicated that members of the Committee should hold senior level positions in their governments, organizations and agencies; be knowledgeable about the issues; and have authority to influence and commit to a range of recommendations.

Interviewees expect that MRRIC will create a number of technical committees to gather data and develop proposals for the Plenary Committee’s consideration. Interviewees stressed that members of technical groups should be able to draw on sound scientific and technical experts when conducting their deliberations, drawing conclusions or making recommendations to the Plenary Committee.

### ***7.6.1 Recommendations of the CDR Team regarding level of authority of MRRIC and its membership***

The Team concurs with and supports the recommendations of the majority of interviewees regarding levels of authority and expertise needed by members of the Recovery Implementation Committee and technical committees – that they include senior leadership from Federal, Tribal, and state governments, and executive director level leaders from non-Federal, Tribal and State stakeholder organizations.

## **7.7 Procedures for Nomination, Selection and Appointment of MRRIC Members**

Almost all interviewees agree that identifying prospective members, securing nominations, selecting and appointing members of MRRIC will be one of the most difficult and potentially contentious tasks in convening MRRIC. They recognize that this may especially be the case for non-Federal, Tribal and state members, as there is a high level of interest in and demand for participation and membership on the Committee.

It should be noted that Federal agency decisions regarding whether MRRIC is subject to the Federal Advisory Committee Act (FACA) may significantly affect the nomination, selection and appointment process. (See the section later in this report for a description of FACA and convening and management considerations related to its application.)

When asked how potential members might be identified and selected, those polled and interviewed had a number of responses:

- ◆ Since MRRIC is to be a Basin-wide initiative, potential candidates for membership should be identified and nominated from across the Basin, giving consideration to equity between Upper and Lower Basin membership.
- ◆ Approximately a quarter of interviewees suggested using members of the Spring Rise Plenary Group as a core group for MRRIC, and adding additional members who lived in the Upper Basin and on tributaries to create a regionally balanced membership.
- ◆ MRRIC should be a new group, rather than being automatically composed of former members of the Spring Rise process.

Many interviewees emphasized that since MRRIC is to be a Basin-wide initiative, potential candidates for participation should be identified and nominated from across the Basin.

Interviewees identified the following considerations regarding identification, nomination, selection and appointment of MRRIC members:

## **7.8 Nomination, Selection and Appointment of Federal and State Members**

Interviewees suggest that members from Federal and state agencies should be appointed based on the principles in the Levels of Authority and “*Desirable Characteristics and Qualities*” sections above.

Federal agencies are currently in the process of determining the appropriate number of Federal participants on the Committee, and in the Federal caucus. Federal agencies will

appoint Committee members who are authorized to speak with one voice for their agency.

Most representatives of states who were interviewed strongly advocate that each state should have two Committee members per state on MRRIC, with the exception of Wyoming, which initially wants only one. Furthermore, most of these respondents believe that state representatives should be directly appointed by Governors. Interviewees also indicated that states should appoint individuals authorized to represent the views and interests of the state as a whole as opposed to only one interest group, and that representatives should speak, whenever possible, with one “state” voice rather than presenting two or more views from a state’s delegation.

## **7.9 Nomination, Selection and Appointment of Tribal Government Members**

Tribes as sovereign nations must be fully recognized as key parties and partners in recovery efforts in the Basin. All 28 Tribes in the Basin should have a place on MRRIC. Recovery issues are very important to and will have impacts on Tribes. Tribes have a great deal of expertise and information to contribute, and they should have full access to and participation in MRRIC, to raise issues of concern and to work on mutually acceptable options to address them.

To assist in the coordination of Tribal input and participation on the Committee, it will also be important to have an overall administrative or coordinating body to assure that Tribes are consistently informed about the Committee’s activities and decisions and to guarantee that they are well-represented. This administrative body might also function as a repository for information, a central point for dispensing travel funds, and a mechanism for setting up conference calls. Each Tribe will also need to designate a specific point of contact to whom information will be directed.

## **7.10 Nomination, Selection and Appointment of non-Federal, Tribal or State Members**

The identification, nomination, selection and appointment of non-Federal, Tribal and state representatives to MRRIC is more complicated than the appointment of representatives from Federal, Tribal and state governments and agencies. This is because of the large number of concerned interest groups in the Basin and the number of people who want to represent them and participate in the process.

Interviewees during Situation Assessment interviews were asked to identify and indicate their preferences for selection procedures. Three polls that addressed this issue were conducted during March and April of 2006. When asked to articulate ideas about

selection procedures, respondents said that any process for identification, nomination, selection and appointment of representatives on non-FTS stakeholders should:

- ◆ Depoliticize the selection process, to the greatest extent possible;
- ◆ Require an extremely well qualified slate of nominees;
- ◆ Consider nominating several candidates for each member “seat”;
- ◆ Result in representative and balanced representation within an interest group;
- ◆ Allow for at least two representatives for each interest group or perhaps one permanent member and an alternate;
- ◆ Be transparent, efficient and timely;
- ◆ Assure that potential members meet standards identified in the list of *Desirable Characteristics and Qualities of Potential MRRIC Members* above;
- ◆ Be widely perceived to be fair; and
- ◆ Comply with FACA guidelines, if they apply.

When asked to recommend possible identification, nomination, selection and appointment procedures, many interviewees, at least initially, did not have any suggestions. To fill this gap for possible procedures, the CDR Team proposed several straw processes in the Draft Situation Assessment report. The Team’s suggestions galvanized potential members of MRRIC to come up with several other alternatives for consideration.

Participants in Poll 3 were surveyed regarding their preferences regarding several selection procedures, and also asked to identify which they found to be totally unacceptable. (See Appendix 7, Polls and Polling Results, for the range of options that were considered.)

The three selection procedures that non-FTS participants most preferred are listed below in their order of preference. Sixty-six percent of all poll respondents preferred Method 1, selection of MRRIC non-FTS members by membership category caucuses.

**Preferences for Selection Procedures for non-FTS Members of MRRIC**

| # | Method  | Details  |
|---|---|--|
| 1 | A caucus of each MRRIC membership category meets separately and selects its own representatives | Multiple caucuses composed of members of non-FTS stakeholders in the membership categories described above would meet, select, and appoint their allocated number of representatives to MRRIC.   |
| 2 | US Institute selects from nominations from stakeholders   | Nominations would be solicited from all concerned stakeholder groups and nominees would provide documentation that they represent a defined group (or caucus) of stakeholders. Selection of appointments for the first meeting of MRRIC would be made by the U.S. Institute. Additional members could be added by MRRIC members after the first meeting. |

|   |  |  |
|---|--|--|
| 3 | Representatives of all MRRIC membership categories meet, establish a procedure and select. | A large open meeting attended by any concerned non-FTS stakeholders from the membership categories described above would be convened. Participants would meet and negotiate the selection and appointment of representatives for all stakeholder categories according to the number of "seats" allocated for each membership category. |
|---|--|--|

### ***7.10.1 Recommendations of the CDR Team regarding selection of MRRIC members***

The CDR Team believes that the major processes for selecting members of MRRIC have been identified. They have been considered and evaluated by potential non-FTS stakeholders and their preferences have been indicated.

The most acceptable method for selection of non-FTS stakeholder representatives on MRRIC is by interest group caucuses. The CDR Team accepts this input and concurs with the conclusion. However, the team has recommendations regarding how this selection process should be implemented.

- 1) Existing members of a caucus should adequately inform all other potential caucus members about the proposed procedure and timeline for selection decisions, so that they have adequate time to participate and respond.
- 2) Nominations should be solicited broadly within the potential pool of stakeholders who might represent the specific membership category.
- 3) Nominations should be sought for representatives of sub-interests within a stakeholder category, if appropriate.
- 4) Nominations should be sought for individuals who are leaders and who have the strong support of their organizations or interest groups. Nominees should have a clear group of constituents whom they represent, and should not represent themselves alone.
- 5) Nominees should be sought who will subscribe to the *Desirable Characteristics and Qualities of Future MRRIC Members* identified earlier in this report.
- 6) Selection and approval of nominees should follow a fair and democratic process, either by a vote or consensus, and should not be decided by a small group or clique.
- 7) Each caucus should develop a fair internal dispute resolution process if either the selection process or its outcome is contested.
- 8) Commitment to the agreed upon MRRIC protocols or ground rules should be enforced.

## **Section 8. Deliberations and Decision Making by MRRIC and its Working Groups**

MRRIC will be called upon to provide a wide variety of recommendations to the Federal agencies. This section describes procedures and makes recommendations on how agreements can be reached and decisions made on recommendations.

## **8.1 MRRIC Decision Making Process where specific recommendations are needed.**

A significant amount of time in the situation assessment interviews was spent soliciting interviewee opinions regarding how decisions should be made by MRRIC, and who should be involved in providing input, deliberations and making decisions on recommendations to Federal agencies. Described below is the thinking of interviewees on this question.

By a large majority, interviewees believe that MRRIC should seek to reach consensus decisions. They think that this is the only way to develop integrative solutions and that decisions by voting would be neither representative of the broad range of stakeholder interests nor as politically influential as a consensus decision. One interviewee from a conservation group summed up the views of a broad spectrum of stakeholders when he said, "Decision making must serve all – not a few select and powerful interests."

The only real concern was that the Committee not get stuck when a consensus could not be reached. Many interviewees want a fall back process that will enable them to reach decisions. As one Tribal interviewee noted, "We need clearly spelled out decision making procedures. Consensus – what does this mean, and how do we ask for it? We need to know whether we are counting or not counting votes for and against a particular view. This needs to be settled and a consistent protocol followed throughout the process."

By a large majority, interviewees believe that MRRIC should seek to reach consensus decisions.

Those interviewed who participated in the Spring Rise Facilitation generally subscribed to the definition of consensus used in the Protocol and Ground Rules:

Consensus is a process for reaching agreement that does not rely on voting. A consensus is the strongest decision-making process a group can use, because it is a settlement or solution with which all participants can agree.

A consensus decision is built by identifying and exploring all parties' interests and by assembling agreements that satisfy their interests to the greatest extent possible. A consensus is reached when all parties agree that their major interests have been taken into consideration and addressed in a satisfactory manner.

A consensus does not necessarily mean unanimity. Some parties may strongly endorse a particular solution while others may accept it as a workable agreement. This situation may still constitute a consensus. Each party participates in the consensus without embracing each element of an agreement with the same fervor as other parties, or necessarily having each of his or her interests satisfied to the fullest extent. However, given the combination of gains and trade-offs in the decision package, a consensus is the strongest agreement that the involved parties can make given current circumstances and alternative options available to them. (Based on the

*Operating Protocol and Ground rules for the Facilitation of an Intergovernmental and Stakeholder Process to Develop Agreement on a “Spring Rise” Proposal. June 1<sup>st</sup>, 2005.)*

Some interviewees think that there is another persuasive reason for participants in MRRIC to make every effort to achieve consensus. They believe that if members of Congress and other leaders see such a diverse group reaching agreements on recommendations for restoration or recovery, the potential for successful funding and implementation is exponentially greater. However as one interviewee said, “Congress will drop this like a hot potato if they see a fight coming.”

While there is general agreement that a consensus process should be used by MRRIC for making decisions, there is significant concern that the group should not become deadlocked and unable to make any recommendations if there is not total agreement on a recommendation. (A number of participants in the Spring Rise Facilitation process were frustrated that the Plenary Group of that process could not make partial recommendations on components of a spring rise because of an early agreement by members that a total consensus on all components of a recommendation would be required for the group to make any recommendations to the Federal agencies.)

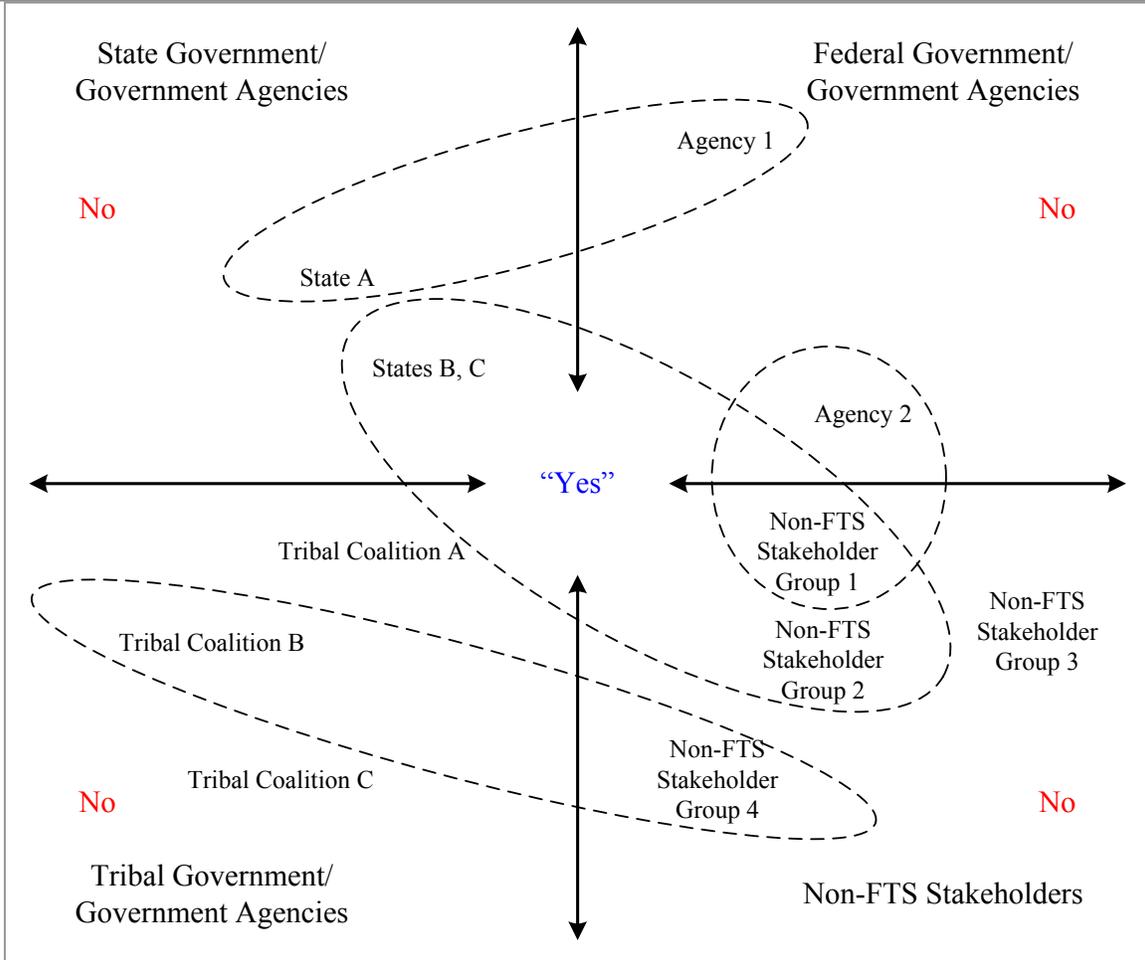
|  |
|--|
| There is significant concern that the group should not become deadlocked and unable to make any recommendations if there is not total agreement. |
|--|

Interviewees came up with a number of options to address some of the procedural constraints of a consensus process. If a consensus can not be reached by MRRIC, the committee could:

- ◆ Collectively identify their preferences for various proposals on recommendations using a “Footprint Chart.” This approach to reporting identifies parties' preferences, either as individuals or as groups, on a specific question after thoughtful deliberations have occurred. To use this tool, parties mark their preferences on a specific question on a chart, which can be viewed by all other parties and forwarded to concerned Federal agencies. (See diagram on the next page). The individual and combined “footprints” of all concerned parties will help agencies to understand where each stands on an issue in question. It should be noted that even decisions that require “yes” or “no” answers (such as whether a certain COE program should be undertaken as proposed) could be plotted a footprint diagram that shows where each stakeholder group lies regarding relative strength of their “yes” or “no” view. The same approach can also be used for quantitative decisions – such as how much funding a certain program merits.

**Example of a “decision footprint” – Recommendation to COE on “Whether the COE undertake the ‘xxx’ program as proposed in Memo X? “**

**Diagram interpretation: The diagram center = “Yes”, Diagram margins = “No”**  
**Location of a stakeholder shows degree of acceptance or rejection of the proposition.**  
**Note – Dotted line means a coalition view on an issue**



- ◆ Not require consensus on all issues in order to make recommendations on issues where some or partial agreement is possible;
- ◆ Submit recommendations on those issues where there is consensus and have the Committee remain silent on those where agreement is not possible;
- ◆ Make recommendations on those issues where there is consensus and allow minority or plurality reports on those issues where agreement is not possible;
- ◆ Build a consensus decision by all parties on some issues, construct two or more interest-based recommendations on those issues where there is not agreement, and forward them to relevant agencies for their consideration;

- ◆ Develop a list of mutually agreed-upon standards or criteria for decision making on issues where there is not agreement and forward them to concerned agencies for their use in making decisions;
- ◆ Develop a list of key interests of concerned parties on issues on which they cannot reach agreement and forward these to agencies to take into consideration when making decisions; and
- ◆ Shift to a voting process. If the Committee cannot reach a consensus, its members may move to change the decision making process from consensus to a super majority vote. The shift from consensus to voting would require two steps. First, a vote would be taken to decide if the shift should take place. A 75% or greater vote by all members attending would be required to make the change. If the 75% cannot be attained, the Committee would have to use one of the other procedures to address non-consensus described above. If a shift of procedure is approved, a second vote would be taken to decide the question. A recommendation or other agreement would be considered to have been approved by the Committee if a 75% majority of members attending the meeting vote to approve it. If a 75% majority of Committee members cannot be attained, the Committee would have to use one of the other procedures to address non-consensus described above

**Who should provide input, be involved in deliberations and/or make decisions on recommendations?**

There were many discussions regarding the issue of who should be involved in MRRIC in making decisions on recommendations that would be forwarded to responsible government agencies for their final decision and implementation. The majority of interviewees believe that MRRIC members from Tribes, states and non-Federal, Tribal or state stakeholder organizations should be involved in and have authority to participate in final decisions on recommendations to Federal agencies.

However many interviewees indicated that the role of Federal agencies in providing input to the Committee, engaging in deliberations and working toward final recommendations needs to be clarified. Table 2, below, “Possible Roles and Potential Involvement of Federal Agencies in MRRIC” outlines some of the options for Federal agency involvement in input, deliberations and decision making.

The role of Federal agencies in providing input to the Committee, engagement in deliberations and involvement in final recommendations needs to be clarified.

| <b>Possible Roles and Potential Involvement of Federal Agencies in MRRIC</b>                         |  |
|--|--|
| <i>Agency Role</i>   | <i>Agency Involvement</i>  |
| 1) Non-participant and not physically present in MRRIC meetings                                      | ◆ Provide input or information as requested by MRRIC stakeholders  |
| 2) Observer or ex-officio member of MRRIC meetings, but not direct participant                       | ◆ Provide input or information as requested by MRRIC stakeholders  |
| 3) Observer or ex-officio member of MRRIC meetings, and provider of technical assistance or analysis | ◆ Provide technical staff and assistance to MRRIC Plenary Group  |
| 4) Participant in MRRIC meetings with circumscribed level of involvement and input                   | ◆ Provide technical staff and assistance to MRRIC Plenary Group as requested, and information on agency “sideboards” (legal, technical, financial, feasible)   |
| 5) Participant in deliberations and development of concrete proposals or recommendations             | ◆ Provide assistance in 4 above, and participate in all MRRIC discussions, with direct involvement in development of specific proposals or recommendations, but <u>not</u> be involved in decisions on final recommendations to agencies |
| 6) Participant in deliberations and decision making  | ◆ Provide assistance as in 5 above, and be directly involved with all other committee members in building a consensus on recommendations that will be forwarded to Federal agencies for final decisions and implementation.              |

The majority of interviewees, including those from Federal agencies, indicate that they want the agencies to provide data and insight, conduct technical research, engage in technical committees and provide parameters or sideboards (Option 4) to MRRIC. Interviewees from several Federal agencies say that they especially want to be involved where issues under discussion specifically relate to their mandates. A number of Federal agency interviewees also say that agency involvement will be especially appropriate where their input would be needed for the development of feasible solutions that will be technically or financially implementable.

Many interviewees also feel strongly that that representatives of Federal agencies must be directly involved in *deliberations* on both general and specific issues related to recommendations. Interviewees advocating this view base their thinking on the following assumptions: if agency staff in positions of authority are involved in providing sideboards and developing specific options or recommendations, they will be more likely to meet agency standards and criteria for acceptability, will be advocated for by agency members of MRRIC and are more likely to be approved as proposed, than if agency staff have not been involved in their development.

### ***8.1.1 Recommendations by the CDR Team on involvement of Federal agencies***

It is clear that robust and continuing involvement, commitment and engagement of high level Federal officials is critical to the MRRIC process. Federal agencies need to make a timely decision regarding their roles and levels of involvement in MRRIC deliberations and decision making on recommendations. It may also be useful for MRBIR to play a role in bringing Federal input to the MRRIC process.

After this recommendation was made in the Draft Situation Assessment report, Federal agencies (COE, USFWS, USEPA, NPS, BOR and WAPA) had several internal agency discussions, reviewed Tribal, state and non-FTS stakeholder input, and tentatively decided that:

*The Federal agencies will participate in MRRIC to provide technical, regulatory, legal, policy, and other information as requested. However, the Federal agencies will not participate in decision-making within MRRIC on the recommendations put forward by MRRIC. The Federal agencies cannot abrogate any of their responsibilities or authorities and will be making final decisions regarding implementation of recovery actions, including those recommended by MRRIC.*

(See Appendix 8 for complete statement of Federal Role in MRRIC deliberations and decision making.)

## **Section 9. Intergovernmental and Interagency Cooperation and Commitments**

Interviewees from both governmental and non-governmental entities identified three major issues in this category:

### **9.1 The Missouri River Association of States and Tribes (MoRAST)**

A number of interviewees indicated that the relationship between MRRIC and MoRAST must be clarified to define the division of labor between the two organizations and to avoid any future competition. A number of people who held this view are from states. The key question to be addressed is: *What will be the relationship, mandates, focus, roles and responsibilities of MRRIC and MoRAST (and non-member states if all do not join MoRAST)?*

Some interviewees see the two organizations as being totally separate, with only a minimal need for communication or coordination. Others believe that MoRAST can serve a role as a lobbying organization for recovery efforts in the Basin and as a state/Tribal caucus for MRRIC. As one interviewee from a state agency said, “the relationship of MRRIC and MoRAST is important. MoRAST is strong because it links MRNRC and

water folks together at the policy level to address larger issues... MoRAST will provide a state perspective to MRRIC.”

These interviewees strongly recommend that discussions be held at the earliest possible time among MoRAST (and any Tribes or states that are not members), Federal agencies and possibly the new members of MRRIC, to define the areas of focus of MRRIC and MoRAST, to maximize each organization’s effectiveness and to minimize confusion.

A number of interviewees indicated that the relationship between MRRIC and MoRAST must be clarified to define the division of labor between the two organizations and avoid any future competition.

## **9.2 Federal Interagency Cooperation**

How will Federal agencies cooperate and coordinate to a) accomplish the goals of MRRIC, b) make collaborative and unified decisions, c) define and allocate their roles and responsibilities, and c) fund the initiative? Many interviewees felt that there was inadequate coordination or development of common views among agencies involved in the Spring Rise Facilitation. They would like to see this improved in the MRRIC process.

A number of agency and non-agency interviewees recommend that the agencies work together either bilaterally or multilaterally, perhaps in the context of the Missouri River Basin Interagency Roundtable (MRBIR), to develop formal Memoranda of Agreements (MOA’s) on their process for working together within MRRIC.

A number of agency and non-agency interviewees recommend that the agencies work together to develop MOAs on their process for working together within MRRIC.

In addition, a Principles Working Group, composed of senior agency officials in Washington, was also suggested. A Principles Group could coordinate agency interactions and decisions on Missouri River Recovery issues at the national level, including addressing any issues that need to be elevated by the Federal caucus of MRRIC; develop political support for the process; share information among agencies and with elected and appointed political leaders; and act as a liaison with Congress.

## **9.3 Tribal Cooperation**

Interviewees, both from Tribes and non-Tribal organizations, indicate that Tribal involvement in MRRIC is essential for its success. Administrative support will be helpful to Tribes, in assuring that documents, records, and communication is provided to them in a timely and efficient manner.

### ***9.3.1 Recommendations of the CDR Team regarding Intergovernmental and Interagency Coordination***

***MoRAST and MRRIC*** – To address the concern about relationships among MoRAST, non-member states and MRRIC, it will be important to build on conversations already initiated between MoRAST (with the State of Missouri as an observer) and Federal agencies involved in the formation of MRRIC, regarding organizational roles and responsibilities. Ultimately these discussions need to be taken over by MRRIC. It is critical that these discussions be open and transparent, with MRRIC’s participation once it is formed.

***Interagency Cooperation*** – The CDR team strongly recommends that involved Federal agencies develop a MOA regarding interagency working relationships in MRRIC process. In that context, the agencies may want to secure the services of an internal facilitator to help them develop the document. The U.S. Institute has provided these services in the past to agencies undertaking similar initiatives. In addition to the development of MOA’s between or among Federal agencies, the Team suggests consistent, close coordination among agencies, perhaps through the regular forum of the Missouri River Basin Interagency Roundtable (MRBIR).

The CDR Team also strongly encourages the development of a Washington based Principles group composed of senior agency leaders to provide and develop support for MRRIC and its work in D.C.

***Tribal Coordination*** – Because of the large number of Tribes involved in the MRRIC’s deliberations and decision making, the Team recommends that funding be made available to enable them to secure administrative and logistical support.

## **Section 10. Initial Procedural Issues to be Addressed by MRRIC**

Issues identified by interviewees that should be addressed by MRRIC can be grouped into five categories:

1. Agreement on the broad mandate for MRRIC;
2. Productive ways to deal with change;
3. Strategy development for MRRIC;
4. Roles and processes for collaborative action; and
5. Processes for addressing the most difficult, long term issues while taking immediate action on the easier or more manageable issues.

## 10.1 Agreement on the Broad Mandate

All interviewees agree that MRRIC must have clear goals and that one of its first tasks will be to reach agreement on its focus, purpose and mandate. Issues raised in the mandate section earlier in this report should be a main topic for discussion. As an interviewee from a conservation group noted, “MRRIC must approach the River broadly and holistically – not just flow or habitat restoration. It must address all interests.”

## 10.2 Finding productive ways to deal with change

Although not as universal as concerns about the mandate, many stakeholders recognize that the Basin has suffered from tensions and hard feelings about past or projected, future changes. There is also significant anxiety about potential adverse impacts that may result from future changes in the way the river is managed and the ability of people to plan for them. As one interviewee from the power sector said, “We are not opposed to dealing with environmental issues, but we want to minimize impacts on the rest of us. We need predictability and do not want to be surprised. We can accept change but want to deal with changes in a way that we can plan ahead...a project approach.”

Many see change as an issue to be addressed. It is reflected in the following observations or generalizations:

- ◆ The Basin must change to focus on recovery – and the status quo resists change.
- ◆ The complex Basin geography (both physical and social/economic) makes change difficult.
- ◆ There is a history of conflict, often involving Missouri against other states.
- ◆ To achieve change, stakeholders will have to move out of narrow perspectives, learn to collaborate better and avoid the situation in which one party overwhelms the process or other stakeholders.
- ◆ Federal agencies must deal better with each other as well as with Tribes and stakeholders for change to work.
- ◆ The various mandates of the Federal agencies must be reconciled.
- ◆ Change will require long term thinking in the face of short term budget and administrative cycles.

Many stakeholders recognize that the Basin has suffered from a great deal of tension and hard feelings. Many see this as an issue that must be addressed.

### 10.3 How MRRIC can be Most Strategic

Because MRRIC mandate may be so broad and the Basin is so complex, with a large number of stakeholders, interviewees believe almost universally that the Committee must be strategic in its choices, prioritizing which issues to focus on and when. This means that MRRIC will have to make some specific decisions on the basis of its broad mandate. Money and resources are limited, so some believe that the Committee will have to make good choices for its work, and perhaps focus on what its members identify as easier or more manageable issues, where there is a potential for significant impact on species and limited negative impacts on other river uses. Others say that the focus should be on habitat immediately, while working more strategically on long-term “balancing of uses.”

### 10.4 Clarifying Roles and Working more Effectively Together

This issue reflects the previous comments on dealing with change. Interviewees believe that there is a strong need to clarify the roles of various groups that will be involved in MRRIC and to find ways that complementary action can be initiated. Some of the roles and issues that should be clarified include:

- ◆ How should roles, functions and responsibilities of states and Tribes, as compared with non-Federal, Tribal or state organizations, be defined?
- ◆ How can the mandates of Federal agencies be aligned and division of roles and responsibilities be accomplished?
- ◆ How can MRRIC be as efficient as possible, avoiding being overloaded with an elaborate structure or staff?
- ◆ How can plans and recommendations be developed that will be effective and defensible?
- ◆ How can MRRIC’s individual members and the group as a whole develop an attitude of “looking for opportunities” rather than getting caught up in barriers or challenges?
- ◆ What will be the ultimate scope for the work of MRRIC? (Some interviewees believe that the COE sees it fairly narrowly, while a number of stakeholders see it as being much broader.)

### 10.5 Addressing the Most Difficult Issues While Taking Action on the Easiest

*The most challenging issues* identified by interviewees include, but are not limited to:

- ◆ **Water allocation.** The most difficult issue identified with regularity is that of river flow management and competition for water; referred to by some as water management and others water allocation. Within this there is the issue of “how flow

changes are justified?” Many interviewees noted that that having a plan is not enough. How will it be justified? Very important sub-issues include:

- Upstream and downstream challenges related to different water needs;
  - Release and preclude levels, as discussed in the Spring Rise facilitation, and which is of special concern to diverse Upper Basin users (water supply, recreation, fish and wildlife, historic properties, traditional cultural properties and burial sites, etc.), and downstream power operators and navigation interests; and
  - Interior drainage, which many farmers in the Lower Basin are very worried about; (As one interviewee from the agricultural sector noted, “One man’s protection is another man’s destruction. We do not want to tear out the dikes.”)
- ◆ **Government to Government Relations.** Ensuring that the process gives proper respect to the Tribes’ position as sovereign governments and to recognition of the validity of Tribal government concerns.
  - ◆ **Monitoring.** This issue is seen by some interviewees as both easy and difficult. At its core, the issue is “What are the potential or actual impacts on various uses of proposed or current changes?” “What are the positive and negative impacts to various uses?” and “How will any negative effects on various uses be avoided, limited and/or mitigated?”
  - ◆ **Hot button issues and politics.** There are a number of hot button issues for various parties who will be involved in MRRIC. Some of them include conducting a Spring Rise; potential impacts of rises on interior drainage; limitations on the navigation season; protection of historic properties, traditional cultural resources and burial sites; and assuring the functioning of water intakes. There is significant fear around these issues. As one agricultural interviewee said, “The ultimate goal is to flood land, make us poor and allow land purchases (by environmentalists).”

These issues have and can become rapidly politicized. Parties may move their efforts to forums outside of MRRIC if effective ways to address them are not found within the Committee. Members of MRRIC must discuss how these and other politically sensitive issues will be handled, so that continued working relationships among and between members and the functioning of MRRIC can be preserved.

- ◆ **How to develop science that has integrity and in which there is public confidence.** Many interviewees identified conflicts over what constitutes good, compelling and defensible science as one of the major issues that must be dealt with by MRRIC. Some of the approaches for addressing these issues are in the following section of this report on Obtaining Necessary and Acceptable Data.

**The easiest or most manageable issues**, as perceived by the majority of interviewees, were those that related to the creation of plans and recommendations for the development and/or enhancement of habitat for endangered species. This would include physical rehabilitation and the development of locally sponsored projects.

## **Section 11. Obtaining Necessary and Acceptable Data**

As noted above, a significant number of interviewees believe that having adequate data and reaching agreement on it will be critical for the committee to make progress on recommendations. As one business representative said. “MRRIC needs to get away from indirect answers and poor science – we need agreement on science. Success will be accurate and impartial science.”

Issues around data fall into four categories:

1. Why does MRRIC want or need “data”?
2. What are the current gaps in data that will be needed by MRRIC?
3. What data dynamics and politics are present?
4. How MRRIC can better approach data and some possible solutions.

### **11.1 Why does MRRIC want or need “data?”?**

There were a number of data issues on which there was widespread agreement – perhaps approaching consensus. One such issue is the “need” for data. Many interviewees report that there is a very strong need for quality data. But many also say that data collection should not be an end unto itself. They say we “are not collecting data just to do so.” Rather, data are needed:

- ◆ So MRRIC can make the best decisions based on the best science,
- ◆ To develop credible, defensible, and informed recommendations,
- ◆ Which follow professional standards and procedures concerning data collection and analysis,
- ◆ To build a common knowledge base among stakeholders,
- ◆ To increase understanding among stakeholders and the broader public, and
- ◆ Which are empirical and field based, rather than theoretical or based in conjecture.

### **11.2 What are the Current Gaps in Data that will be needed by MRRIC?**

The gaps in data fall into several categories:

- ◆ Socio economic data
- ◆ Data regarding effectiveness of recovery actions or “impact” of recovery actions
- ◆ Lack of a data structure
- ◆ Specific data gaps

***Socio economic data.*** Although the Spring Rise process showed many differences in how to manage the River, many stakeholders think that the data about hydrology was generally quite complete. An exception is on interior drainage and flooding information. The most common complaint about a data inadequacy was what may be called economic and social data (referred collectively as “socio economic data”). Social Data would need a more complete definition by MRRIC but could include all forms of data about the economics and society living along the River and within the Basin. This Social Data includes the economics and relative value of all the industries tied to the congressionally authorized uses, including recreation and navigation. In whatever way it is eventually defined, stakeholders believe that Social Data is not the traditional domain of the COE, and other approaches and entities will be needed to compile and assess this information.

***Impact data (impact of recovery action).*** This gap is described as the absence of real data about how proposed interventions or changes in river management – such as flow releases, spring rise, increase in habitat – will impact goals for recovery (referred to as “Impact Data”). Comments about the lack of Impact Data were quite common and point to a larger concern reflected elsewhere in the situation assessment – that MRRIC must be able to better define “recovery.” What is the desired outcome or state of the Basin? What data or indicators would permit MRRIC and stakeholders to determine whether the proposed actions were having an impact on the River; the species; historic properties, traditional cultural properties and burial sites? Because many stakeholders perceive that this research has not been completed, they are only able to say that Impact Data are not available and are unable to define it in more detail.

To have high quality Impact Data, MRRIC will need to develop good baseline data on the various issues on which impact is being assessed (such as populations, habitat, economics, recreational use). Some stakeholders suggest that this type of work and that concerning the data structure mentioned below, are appropriate topics for technical working groups that support MRRIC.

***GIS – based data framework and protocol.*** Tied to the comments on lack of Impact Data, was that MRRIC needs a coherent data framework that is tied to professionally accepted protocols. This would be a framework that guides MRRIC about what research is needed, what data are needed for that research, how data will be collected, methods of analysis, and, importantly, how disputes about data will be resolved. As many issues to be addressed by MRRIC are interconnected, the issue of data structure is linked to the use of independent science.

***Specific data gaps.*** Some stakeholders identified specific data gaps such as interior drainage problems, flood gate elevations, acreages of habitat, river temperature, economics of various industries (such as navigation usage and economics), and locations of cultural and burial sites.

### 11.3 What Data Dynamics and Politics are Present?

More strongly than ‘what data are needed’ were comments on the dynamics and politics of data. As one Federal interviewee noted, “We must get out of data politics and get back to using credible science.”

Many stakeholders felt that trust of current data was very low, especially among non-governmental stakeholders. A number of interviewees attributed this to the behaviors of Federal agency staff. Conversely, other parties saw some non-governmental stakeholders as trying to delay any decisions until an unreasonably high level of scientific certainty could be established before making decisions.

More strongly than ‘what data are needed’ were comments on the dynamics and politics of data.

Complaints about data dynamics or politics, from all sectors, include the following:

- ◆ Data arrogance – “my data are better than yours” or “let me tell you what these data mean;”
- ◆ Data ownership – reluctance to share data with others, spend time needed to explain it and actions that indicate that the data are owned by the agency or even the person who collected it;
- ◆ Reluctance to engage in data review or peer review;
- ◆ Data ‘games’ – withholding data or not disclosing their existence until repeatedly requested;
- ◆ Data isolation – researchers appearing to work in isolation and not conferring with each other;
- ◆ Data politics – the unfortunate but not unusual practice of politicizing science and data, or politicians telling scientists what to say; and
- ◆ Data censorship – complaints that persons or agencies censor data in an effort to make peace or avoid problems with other agencies or individuals.

Stakeholders also stated that data need to be presented in useable and understandable ways. Some suggest finding better ways to use charts and diagrams to show data and the potential conclusions. Stakeholders, perhaps reflecting on the time demands of the Spring Rise process, emphasized that they need adequate time to receive and review data.

### 11.4 How can MRRIC better approach and obtain acceptable data – some possible solutions.

Stakeholders proposed several solutions to address the complaints and situations described above.

***Independent science.*** A large number of interviewees asked for a credible independent science review process using the National Academy of Science (NAS), or U.S. Geological Survey (USGS) or creating some form of a MRRIC independent science review panel. Most who suggest this believe it to be an essential step toward data and science credibility.

In addition to a independent science panel, many suggest bringing in to the MRRIC process other outside sources of assistance, such as universities and experts from state agencies (such as state hydrologists). To help in data collection and analysis (such as the prior work of MRNRC). One representative of power interests said, “We (MRRIC) will need reliable, vetted (data and an) independent scientific review.” Non-government review is important, such as that by universities. Some believe that government has too much of a vested interest (in results). As one Tribal leader noted, “All information and data must be considered, including data from all governments that are participants (in MRRIC). Credibility of all data should be evaluated by the group, by an outside firm that compiles and evaluates it, or by a Federal agency without a vested interest in Missouri operations.”

Some stakeholders suggest that a commitment to using independent science review will:

- ◆ Promote resolution of data disputes;
- ◆ Keep MRRIC focused on issues and not personal or institutional agendas;
- ◆ Get input from outside of the Basin;
- ◆ Let MRRIC settle on factual findings;
- ◆ Provide a system of “checks and balances;”
- ◆ Assess costs and benefits of various actions; and
- ◆ Help MRRIC find ways to value human endeavors such as tourism, recreation, cultural values, etc.

A large number of interviewees asked for a credible independent science review process using the National Academy of Science (NAS), or U.S. Geological Survey (USGS) or creating some form of a MRRIC independent science review panel.

***Review of data by MRRIC members.*** One suggestion was to use procedures that are commonly followed in state legislatures to assess data. MRRIC can appoint a subcommittee of its members to hear presentations of experts. This committee will then make decisions regarding what science it will accept or use and make a recommendation to the Plenary Committee.

***MRRIC technical committees.*** Many expect that a great deal of data work (decisions on what to monitor, how to collect and analyze and presentation) can be accomplished by technical committees created by MRRIC. Stakeholders state that these teams must work at the specific direction of MRRIC. Some stakeholders emphasize that membership in technical teams must be based on scientific credentials, not mere interest in the topic.

***Joint scoping and commissioning of future studies, and joint hiring of experts to conduct them.*** A number of interviewees believe that MRRIC should be able to commission studies to explore new area of science or socio-economic issues, or test the results of previous research. However, the scope and methodology should be jointly agreed upon by MRRIC, and consultants should be hired with MRRIC as their client.

***Professional standards.*** The use of professional standards will avoid complaints that action proposals have been based in politics or guesswork rather than science.

***Create and use a data framework.*** This proposal was discussed above and is intended to make data identification, collection and analysis more professional and predictable.

***Data transparency.*** As discussed above, data transparency is needed to avoid the data arrogance, ownership, games, politics and isolation that are perceived by stakeholders. For some stakeholders, data transparency also means presenting data to the public, in forms such as “primers” that explain the various key issues about the River (such as how the dams are operated).

***Interventions are combined with credible data.*** Some stakeholders believe that MRRIC can progress when options for various recovery actions are credibly tied to the data that suggest that the intervention will produce the desired results in the field.

#### ***11.4.1 Recommendations of the CDR Team concerning Science and Data***

One of the first orders of business of MRRIC should be the appointment of a Technical Committee or Working Group to develop recommendations for the Plenary on how issues related to data and science should be addressed. Agreement on at least some of these data issues will have to be reached, especially if particularly contentious recovery issues are to be addressed successfully.

In addition to suggestions made by interviewees concerning how to address data issues, the science and data committee might also consider the use of collaborative modeling to obtain broadly acceptable information on issues such as hydrology and social impacts, and use of GIS-based decision support systems to organize data that have been collected.

### **11.5 Funding**

Almost universally, interviewees believe that MRRIC should be funded by the Federal government. Initially, they believe that the majority of funding should come from COE appropriations for species recovery activities. In the long term interviewees believe that MRRIC might obtain its own congressional authorization, but funds should still be administered by the COE.

Almost universally interviewees believe that MRRIC should be funded by the Federal government.

A number of other parties, both governmental and non-governmental, believe that other Federal agencies involved in recovery efforts should also contribute to the MRRIC's budget, though they recognize that some may have limited funds, as well as constraints on how they receive appropriations and its utilization for interagency recovery efforts.

In general, interviewees from state governments said that their contributions should be in kind – such as providing funds for their representatives to attend meetings, making facilities available for meetings, providing technical experts – and that they should not be expected to make cash contributions.

A small number of interviewees noted that the Federal government should financially support mitigation measures to reduce impacts on affected users. One interviewee noted “If Congress really wants this to succeed, they should be funding necessary modifications. For example, if there is navigation preclude, Congress should pay to change intakes, subsidize transportation people, etc.”

A number of interviewees indicated that a fund should be developed to support participation in MRRIC (for expenses only) by members whose organizations did not have funds to send them to meetings. An interviewee representing recreational interests articulated a view that was common among stakeholders from recreation, agricultural and Tribal parties that have fewer resources: “This is a Federal process, so travel expenses and per diem funding should be provided for (by Federal agencies).” However, people generally feel that funding should be available on the basis of need.

A small number of interviewees indicated that funding may need to be available to secure the services of independent technical experts beyond those that can be provided by Federal and state agencies.

## **Section 12. Other Issues of Concern to Interviewees: Trust Building**

Many interviewees addressed this question. Suggested actions that both facilitators and Committee participants might take to build trust include:

- ◆ Adhering to ground rules, especially those regarding mutual respect;
- ◆ Listening carefully to one another and demonstrating understanding;
- ◆ Establishing accountability mechanisms, to consistently enforce the guidelines which have been mutually agreed upon, regardless of status or position;
- ◆ Sharing data in an equitable and transparent manner – addressing some fears that data will be manipulated and/or shared selectively;

- ◆ Developing and distributing meeting summaries in a clear and consistent manner, which all agree must be taken by a neutral party (from the facilitator team or a court reporter, for example);
- ◆ Encouraging an open, honest atmosphere, in which people can openly disagree without fear of being attacked or shut down;
- ◆ Avoiding actions or even the perception of actions which would undermine the credibility or the work of MRRIC (or of individual members);
- ◆ Encouraging social gatherings, field trips and other ways for participants to engage and learn more about one another;
- ◆ Participating in capacity building training programs on collaborative problem solving and interest-based negotiation procedures;
- ◆ Meeting in locales throughout the Basin that members consider neutral ground;
- ◆ Giving one another the benefit of the doubt, not rushing to judgment, and always clarifying assumptions (even if there is a historical reason for making that assumption);
- ◆ Creating a charter which provides a clear picture of how MRRIC will operate and which clarifies expectations – and can be amended (by agreement of the parties) as the group gains experience with its operations;

### ***12.1.1 Recommendations of the CDR Team regarding the building of trust in this process***

CDR endorses the trust-building recommendations above. MRRIC should take adequate time to build a charter and protocols (see below), including guidelines for participation, to help members build greater trust in the process and in one another. Members should also insist on consistent feedback mechanisms to assess whether the levels of trust that they are hoping to build are actually occurring.

## **Section 13. Protocols, Meeting Guidelines and Enforcement of Ground Rules**

A significant number of interviewees emphasized that having clear protocols, meeting guidelines and ground rules to guide the operation of MRRIC and conduct of its members is of critical importance to them. They also noted that procedures will be needed for their enforcement, with consequences for non-compliance.

A number of interviewees note that the protocols and ground rules for the Spring Rise could be used as the basis for MRRIC process with several additions including:

- ◆ Accountability and enforcement provisions;
- ◆ Protocols for communications by memorandum or e-mail between meetings;
- ◆ Procedures for dealing with the press;

- ◆ Procedures for determining acceptable lobbying practices during MRRIC deliberations;
- ◆ Procedures for raising issues of concern regarding the performance of individual or group members; and
- ◆ Procedures for addressing issues involving the facilitators and meeting facilitation process.

A significant number of interviewees say that having clear protocols, meeting guidelines and ground rules to guide the operation of MRRIC and conduct of its members will be of critical importance.

### ***13.1.1 Recommendations by the CDR Team regarding Protocols***

Detailed examination of prospective protocols and ground rules will be essential to the functioning of MRRIC. Use of Spring Rise protocols and recommended additions should be discussed at initial MRRIC meetings and, if appropriate, incorporated into its charter.

## **13.2 Interest and availability of interviewees to be considered as representatives of stakeholder groups for participation in MRRIC**

Most interviewees expressed a keen interest personally and on behalf of their stakeholder groups in being considered for membership on MRRIC, either on the Plenary Committee or in working groups. The majority of interviewees indicated a desire to be involved so that they could be part of a positive change. Others, albeit a minority of people interviewed, viewed involvement as a way to protect their interests. One interviewee noted “We may have no choice (for involvement). If we are not there, we are shooting ourselves in the head. Our involvement will be critical to keeping our head off the block.”

### **13.2.1 Term of appointment and service**

Some interviews indicated that while they were interested in participating in some capacity in MRRIC, they did not want to “sign up for life.” They felt that it would be important prior to the convening of the Committee to define term limits for members.

## **13.3 Meeting Schedule**

A small group of interviewees indicated that they were interested in participating in MRRIC, but did not want to work with a compressed schedule such as that required for the Spring Rise Facilitation. These respondents indicated that they would be more likely

to participate if MRRIC, at least in its first year, met on a quarterly basis, and interim business was handled by a broadly representative Executive Committee.

Other interviewees believe that MRRIC will have to meet more frequently, at least during the first year. They suggested a two-day meeting every two months.

On Poll 3, indicated that participants preferred quarterly meetings for either one or two days.

### ***13.3.1 Recommendations of the CDR Team regarding schedule***

It is clear that MRRIC must be free from the burdensome time constraints of the Spring Rise process. Further, meetings for the first year of the process will probably need to be more frequent than in subsequent years. However, beyond that, MRRIC must make its own decisions regarding time and schedule.

## **13.4 Federal Advisory Committee Act (FACA) Issues**

As part of the situation assessment, the CDR Team's Co-Leads participated in two interagency conference calls on the implications and potential requirements of the Federal Agency Advisory Committee Act (FACA or Act 5, U.S.C. App.2) regarding the convening, formation, structure and functioning of MRRIC. "FACA governs the establishment, management, and termination of advisory committees within the executive branch of the Federal government. FACA ensures that Federal advisory committees are accountable to the public by maximizing public access to advisory committee deliberations and minimizing the influence of special interests through balanced committee membership." (*Collaboration and FACA at EPA*, EPA public document) Federal agencies that will potentially be involved with MRRIC are continuing their research to determine if the Committee needs to go through a FACA process, or whether the mandate and process for creating the Committee qualifies it for exemption from FACA under Section 4 of the ESA. Involved agencies and their legal counsel must make a decision regarding the status of MRRIC and FACA prior to initiating any formal convening efforts.

### ***13.4.1 Recommendations of the CDR Team regarding FACA issues***

A decision regarding whether MRRIC should be convened under FACA or exempted under Section 4 of the ESA for Recovery Committees needs to be made as soon as possible. This decision will have a significant impact on scope and mandate issues, membership categories and procedures, membership selection and appointment, and the timing for convening the first meeting.

### 13.5 Proposed activities for acting on the situation assessment report and convening MRRIC

A number of prospective participants in MRRIC expressed an interest in the timeline for convening the Committee. They stressed the urgency of getting started as soon as possible. One state agency interviewee said “For MRRIC to work, the Federal agencies must pay attention to the stakeholders and MRRIC must be able to move quickly to substance.” A business interviewee noted that “MRRIC needs to get going – we made progress in the Spring Rise and delay will hurt MRRIC.”

Federal agencies, too, place a priority on getting the Committee up and running. Since the presentation of the Draft Situation Assessment Report, the agencies have been holding weekly conference calls to address a range of convening issues. Future communication for the next few months have been scheduled and a face-face meeting of the MRBIR will be held on May 10<sup>th</sup> to discuss follow-up on the Situation Assessment Report as well as MRBIR’s coordination with MRRIC. They will also establish a timeline for future Committee convening activities.

#### 13.5.1 Recommendations of the CDR Team regarding Situation Assessment follow-up and convening

Federal agencies will ultimately take a significant role in convening MRRIC. Individually or collectively, they will have to make at least some of the initial decisions regarding structural, operational and relational issues to bring the Committee into existence and launch its work. Once MRRIC is convened, its members will begin to take a stronger role in decision making and determining its direction.

To facilitate agency decision making on follow-up to the Situation Assessment Report, the CDR Team has prepared the following list of decisions, identified who should make them, and provided an assessment of their priority.

#### Decisions about MRRIC

| # | Type of decision     | ##  | Decision  | Timing   | Primary Decision Actor(s)                          | Relative Permanence            |
|---|----------------------|-----|---|--|--|--------------------------------|
| 1 | Structural decisions | 1.1 | Whether to charter under FACA or other procedure  | Need decision soon as it affects many other issues | USACE and USFWS in consultation with legal counsel | Relatively permanent decision  |
|   |                      | 1.2 | Initial size of MRRIC, at least for first meeting | Need decision soon as it affects many other issues | Primary Federal agencies based in input from CDR   | Important but can be revisited |

| # | Type of decision | ##  | Decision  | Timing   | Primary Decision Actor(s)  | Relative Permanence  |
|---|------------------|-----|---|--|--|--|
|   |                  | 1.3 | Categories of non-FTS stakeholder groups that should be involved in MRRIC       | Need decision quickly  | Based on non-FTS input, CDR will recommend to Federal agencies, who will decide initial non-FTS categories for membership  | Important but can be revisited   |
|   |                  | 1.4 | Initial size of non-FTS membership  | Need decision quickly  | Based on non-FTS input, CDR will recommend to Federal agencies, who will decide initial numbers of members   | Important but can be revisited   |
|   |                  | 1.5 | Method of selection and appointment of non-FTS members on MRRIC                 | Need decision soon so that MRRIC can be convened   | Based on non-FTS input, CDR will recommend options to Federal agencies because there is not a non-FTS consensus on a preferred process. Federal agencies will decide or negotiate with non-FTS parties. MRRIC will need to address this issue when MRRIC is up and running | Important and relatively permanent for the first meeting, options to revisit are possible. |
|   |                  | 1.6 | Role of Tribes on MRRIC and number of Tribal representatives                    | Ideally need decision soon to help with convening, but definitely need decision before first MRRIC meeting | Tribes will make these decisions.  | Important but can be revisited   |
|   |                  | 1.7 | Role of states on MRRIC and the number of "voices" they have in decision making | Need initial decision soon, but role may also be developed over time                                       | MoRAST, non-MoRAST states and concerned Federal agencies. Later, possibly MRRIC  | Open to limited adjustment   |

| # | Type of decision             | ##   | Decision   | Timing  | Primary Decision Actor(s)                                       | Relative Permanence                               |
|---|------------------------------|------|--|---|---|---|
|   |                              | 1.8  | Level of autonomy of MRRIC   | FACA decision will affect this  | Contingent on FACA,   | Relatively permanent and quite important decision |
|   |                              | 1.9  | One or two phase convening (Convene a smaller group, and that group decides if MRRIC membership needs to be expanded, or convene final group the first time) | Need decision soon so MRRIC can be convened                             | CDR will recommend options to Federal agencies, who will decide | Relatively permanent                              |
|   |                              | 1.10 | Expectations and procedures by which Federal family operates and makes decisions, elevates issues, etc., MOU, Principals Group, etc                          | Need decision soon to permit collaboration                              | Federal agencies  | Relatively permanent                              |
| 2 | <b>Operational decisions</b> | 2.1  | How MRRIC decisions are made (e.g. consensus, majority/minority reports, super majority, multiple options with levels of support for each)                   | CDR Recommendations but MRRIC can revisit this after initially convened | CDR will recommend to MRRIC                                     | Open to adjustment                                |
|   |                              | 2.2  | How quickly to convene MRRIC   | Needs prompt action and notice to Basin                                 | Key Federal agencies  | Relatively permanent decision                     |

| # | Type of decision            | ##  | Decision   | Timing   | Primary Decision Actor(s)  | Relative Permanence  |
|---|-----------------------------|-----|--|--|--|--|
|   |                             | 2.3 | What to do if MRRIC convening takes an extended period of time due to chartering under FACA or other factors   | Need for a back-up agency plan for stakeholder involvement and to provide avenues for public input, (e.g., could include focused collaboration training, information sharing workshops, status reviews of research on key issues). | Key Federal agencies with input from the Institute and CDR need to discuss this issue and develop a contingency plan   | Important but can be revisited according to time schedule for convening of MRRIC |
|   |                             | 2.4 | Funding for some participants  | Early decision would help.   | Key Federal agencies   | Open to adjustment   |
|   |                             | 2.5 | Future role of external facilitators-the U.S. Institute for Environmental Conflict Resolution and CDR  | Shortly after the completion of the situation assessment   | Meeting of concerned Federal, Tribal and State governments/ agencies and non-FTS stakeholders convened by the Federal agencies to discuss how to proceed with facilitation and who should provide it | Important  |
| 3 | <b>Relational decisions</b> | 3.1 | Trust building activities in the Basin and within MRRIC  | Will take time; no immediate decision  | All stakeholders   | Highly variable  |
|   |                             | 3.2 | Responding to parties with concerns about MRRIC process or parties or individuals who prefer to use either the political process or litigation rather than collaborate | Ongoing initiatives, could be aided by building the capacity of agencies and stakeholders to more effectively engage in collaborative problem-solving  | Federal agency discussions with CDR needed, with decisions ultimately up to MRRIC once it is convened  | Variable to address need   |

Timely decisions on some of these issues that will significantly affect the convening and first meeting of MRRIC. The CDR Team encourages the Federal agencies to make a decision on the FACA question as quickly as possible. Following that, Team suggests that the agencies initiate a multi-phase convening process that includes the following steps:

- 1) Concerned agencies should make an initial decision on the size, membership categories and proposed allocation of seats between non-FTS stakeholders, governments and government agencies *for the first meeting of MRRIC*, and communicate these decisions to concerned governments, governmental agencies and non-FTS stakeholders.
- 2) Agencies should decide on the acceptability of various methods and procedures for selecting non-FTS stakeholder members of MRRIC. This decision may be influenced by decisions concerning FACA. Agencies should select the preferred procedure, communicate their decision to concerned interest groups and organizations and encourage, or if appropriate facilitate its implementation.
- 3) Once representatives of non-FTS stakeholders and FTS governments and government agencies have been selected, the agencies should convene MRRIC in a timely manner, allowing adequate time for all representatives to plan to attend,
- 4) At the first meeting of MRRIC, participants should determine the process and timing for confirmation of whether the tentative membership categories are correct, if the allocation of seats to membership categories is acceptable, and make any needed adjustments to membership. Federal agencies must be prepared with a back-up plan if MRRIC parties cannot reach a mutually acceptable agreement on MRRIC size, membership categories or allocation of seats. The committee and agencies should consider using one of the following procedures if consensus cannot be reached on organizational issues:
  - ◆ All MRRIC members attending the meeting, including Federal, Tribal and state members, where organizational or procedural issues are in question may appoint a “decision panel.” This panel will serve on a one-time basis, or at the pleasure of the Committee for a longer term, to address and resolve the issues placed before it. The decision panel will be composed of five members of MRRIC. Nominations for membership on the committee will be solicited from the total membership and not by member category. Appointment to the panel will be determined by a secret ballot of all MRRIC members. The five individuals receiving the most votes will be appointed to the panel. The panel will be empowered to make a decision by majority rule.
  - ◆ All MRRIC members may decide to vote on the organizational or procedural issue in question using the supermajority procedure identified in the section of this report on “Deliberations and Decision Making by MRRIC and its Working Groups” used to make decisions when a consensus of MRRIC members cannot be reached.

- ◆ The decision to break an impasse on an organizational or procedural issue may be referred to Federal agencies to decide.

If MRRIC members cannot decide which of the above procedures to use, the responsibility to make the decision will fall to the Federal agencies.

- 5) Agencies should be clear about and be prepared to provide sideboards regarding their preferred scope and mandate for MRRIC. They need to articulate where they are flexible and open to changes, where they must stand firm and why. Agencies should be prepared to share these views at an appropriate meeting of MRRIC.

## **Section 14. Conclusion**

A Recovery Implementation Committee is needed to coordinate activities and initiatives of concerned Federal, Tribal, and state governments, and non-Federal, Tribal and state stakeholders in the Basin as they develop recommendations on recovery activities for three endangered species. There is currently a growing interest in how best to articulate the focus, composition, funding and convening of this Committee, to start this initiative. While there are a number of positive opportunities and forces that will help in the convening and functioning of MRRIC, there are also significant hurdles that will have to be overcome. Federal agencies must meet as soon as possible after the completion of the Situation Assessment Report and reach decisions regarding how MRRIC will be convened so that concerned non-FTS stakeholders and governments can begin a coordinated effort to recover the endangered species and balance the uses of one of the nation's most valuable resources, the Missouri River.

## **APPENDICES**

- APPENDIX 1**      **Description of CDR Associates and Members of the CDR Situation Assessment Team**
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- APPENDIX 3**      **Membership of MRRIC Situation Assessment Advisory Group**
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## **APPENDIX 1: Description of CDR Associates and Members of the CDR Situation Assessment Team**

**CDR Associates** is an internationally recognized collaborative decision-making and conflict resolution firm, based in Boulder, Colorado. The organization provides professional decision-making, facilitation, mediation, public participation, and conflict management assistance to the public, private, and non-governmental sectors.

CDR has a staff of professional facilitators and mediators who assist people to design and implement issue – specific and culturally appropriate negotiation, cooperative problem solving, and public involvement processes in a productive and constructive manner. CDR has worked on formal government-to-government initiatives as well as interactions among government agencies, the private sector, and non-governmental organizations. Substantive areas of specialization include water, land use, endangered species issues, and socio-economic development.

In the arena of water and water law, CDR offers a range of services to support the successful resolution of water-related issues including interstate allocations and deliveries; integrated Basin planning, development, and quality; hydropower facility relicensing; facility operations; and protection of threatened and endangered species.

### **The CDR Team on MRRIC Situation Assessment**

**Dr. Christopher Moore**, Partner, CDR Associates – Co-Team Leader for the Assessment

**Mary Margaret Golten**, Partner, CDR Associates – Co-Team Leader for the Assessment

**Joseph McMahan, Jr., P.E., J.D.** – Facilitator and mediator in private practice

**Dr. Matthew McKinney** – Associate, The Consensus Building Institute and the University of Montana

**Leigh Price, J.D.** – Principal, Indian Environmental Law and Conflict Resolution

## **APPENDIX 2: CDR's Approach to Conducting a Situation Assessment**

CDR usually conducts situation assessments with a team. Members of the CDR team on MRRIC situation assessment were CDR Partners, Christopher Moore and Mary Margaret Golten, who were Team Co-Leads; and Joe McMahan, Matt McKinney and Leigh Price (See Appendix 1 for description of CDR Associates and the CDR Team). In conducting situation assessments, CDR commonly creates a Situation Assessment Advisory Group (SAAG) to consult with and provide advice to the CDR Team on issues to address in its research and interview process, and for preliminary advice on parties to talk with.

The situation assessment process involves ten steps that are detailed in the box below:

### **Steps for Conducting a Situation Assessment**

1. Identifying a balanced cross-section of prospective individuals, groups, organizations or agencies concerned about the issue in question, and contacting appropriate and key leaders to interview;
2. Researching similar multiparty committee initiatives, and developing a list of relevant and targeted questions to ask interviewees;
3. Making a determination regarding the appropriateness of either face-to-face, telephone, individual or group interviews, and scheduling them;
4. Conducting the first round of interviews;
5. Identifying gaps in the interview list or following up on recommendations by interviewees regarding other people to interview;
6. Assessing and analyzing data gained and identification of key themes, areas of consensus or key ideas that are relevant to consider;
7. Conducting, if necessary a third round of interviews to fill gaps;
8. Writing a Draft Situation Assessment Report;
9. Presenting the Draft Report, either verbally or in written form, to interviewees for input and comments;
10. Considering comments, revising the Report where appropriate, and preparing a Final Situation Assessment Report that is forwarded to relevant agencies and disseminated to interviewees and the general public.

### **APPENDIX 3: MRRIC Situation Assessment Advisory Group**

- ◆ **Randy Asbury**, Coalition to Protect the Missouri River
- ◆ **William Beacom**, Passenger Vessel Association
- ◆ **Paul Danks**, Three Affiliated Tribes
- ◆ **Denise Garnier**, Missouri Department of Conservation
- ◆ **Thomas Graves**, Mid-West Electric Consumers Association
- ◆ **Rebecca Kidder**, Cheyenne River Sioux Tribe
- ◆ **Sue Lowry**, Wyoming State Engineer's Office
- ◆ **Milo Mattelin**, Upper Basin Bank Stabilization
- ◆ **Lanny Meng**, Missouri Levee Drainage Association
- ◆ **Lynn Muench**, American Waterway Operators
- ◆ **David Murphy**, Conservation Federation of Missouri
- ◆ **Wayne Nelson-Stastny**, South Dakota Game Fish & Parks Missouri River Fisheries Center
- ◆ **Dawnette Owens**, Mni-Sose Intertribal Water Rights Coalition, Inc.
- ◆ **Jim Peterson**, Missouri River Bank Stabilization Association
- ◆ **Robert Riehl**, Western Area Power Administration, Upper Great Plains Region
- ◆ **Todd Sando**, North Dakota State Water Commission
- ◆ **Chadwin Smith**, Nebraska Field Office – American Rivers
- ◆ **Nick Stas**, Western Area Power Administration
- ◆ **Gene Zuerlein**, Nebraska Game & Parks Commission

## APPENDIX 4: MRRIC Situation Assessment Questions\*

1. **What are the major issues that you, your agency or organization consider to be important in the development of a Long-Term Recovery Plan for the Missouri River?**
  - ◆ Substantive issues?
  - ◆ Procedural issues?
  - ◆ Organizational/structural issues?
  
2. **What are your major concerns about each of these issues? What is most important to you or your group?**
  - ◆ What do you believe will be the hardest issues on which to reach recommendations or agreement in a long-term deliberative forum? Easiest issues?
  - ◆ Do you feel there should be limits to the issues that are open for discussion or negotiation?
  
3. **What does the term “long-term recovery” in the Missouri River Basin context mean to you?**
  - ◆ Ecosystem? Wildlife? ESA species?
  - ◆ Socio economic or cultural systems recovery?
  - ◆ Basin wide recovery?
  
4. **What will success mean for MRRIC? What is your vision for success?**
  - ◆ Working relationships among the parties?
  - ◆ Data development, exchange, use?
  - ◆ Specific substantive outcomes?
  
5. **What data and/or modeling do you think is required in order to work on a long term recovery effort?**
  - ◆ What data are needed to build a common base of knowledge for all the stakeholders; to support, inform and evaluate management scenarios; to develop a defensible recommendation or agreement?
  - ◆ How can necessary data be obtained and whose information would be most credible?
  - ◆ What kind of technical expertise/support will you and others need during MRRIC process?

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\* *Note, all questions were asked to all interviewees. Some interviewees had no information or comments on some of the questions.*

**6. What should be the mandate, structure and authority of MRRIC?**

- ◆ To whom should MRRIC be accountable? The COE? Other entities?
- ◆ What type of organization should it be?
- ◆ What should be the relationship between MRRIC and implementing entities/agencies?

**7. What agencies, institutions or organizations should participate in MRRIC?**

- ◆ What should be the roles/responsibilities of Federal agencies, Tribes and states in MRRIC? Of NGOs?
- ◆ How many members should MRRIC have and what would balanced membership and representation look like?
- ◆ Are there stakeholders who are critical to the process who may be reluctant to participate?
- ◆ Are there organizations or individuals who would have to participate to ensure authoritative decisions/recommendations?

**8. How do you think internal decisions should be made within MRRIC?**

- ◆ Who should have decision making authority within MRRIC? All members?
- ◆ How should decisions be made? Voting? Consensus? Other means?
- ◆ Should decisions by MRRIC bind its members or implementing agencies to act?

**9. What thoughts do you have regarding funding for MRRIC?**

- ◆ How and where do you think funding should or could be secured?
- ◆ Are there funding sources that would cause you to have concerns, such as those that might place limitations on MRRIC's functioning, credibility or outcomes?
- ◆ Is there funding that individual members of MRRIC might need?

**10. Are there external dynamics likely to influence the convening of MRRIC?**

- ◆ Will Federal, state and Tribal intergovernmental roles and politics affect initiation of this process? How can these best be handled?
- ◆ Who are the leaders best able to help in getting this process off the ground, and how should they be involved?
- ◆ What is your advice for creating trust in the process and for maintaining transparency?

**11. Opportunities and Barriers posed in convening a MRRIC**

- ◆ Are there any significant opportunities or advantages of convening an initiative of this type at this time?
- ◆ What do you see as the major barriers, if any, to such a collaborative process?
- ◆ How might these barriers be overcome?

### APPENDIX 5: Situation Assessment Interviewees

| <b>Interest</b>                             | <b>State</b> | <b>Name</b>       | <b>Organization/Affiliation</b>   |
|---|--------------|-------------------|---|
| Agriculture                                 | South Dakota | Jim Peterson      | Volunteer, Missouri River Bank Stabilization  |
| Agriculture/ Lower Basin                    | South Dakota | Don Jorgensen     | Hydrologist, Civil Engineer, Missouri River Technical Group                               |
| Agriculture/Interior Drainage               | Missouri     | Lanny Meng        | Farmer  |
| Agriculture/Interior Drainage               | Missouri     | Tom Waters        | Chairman, Missouri Levee & Drainage District Association                                  |
| Agriculture/Interior Drainage – Lower Basin | Missouri     | Bill Lay          | Farmer  |
| Agriculture/Upper Basin                     | Montana      | Buzz Mattelin     | Farmer  |
| Agriculture/Upper Basin                     | Montana      | Boone Witmer      | Upper Basin Bank Stabilization  |
| Agriculture/Upper Basin                     | North Dakota | Dave Johnson      | Benson County Representative, Board of Directors, Garrison Diversion Conservancy District |
| Environmental/Conservation                  | Missouri     | Dave Murphy       | Executive Director, Conservation Federation of Missouri                                   |
| Environmental/Conservation                  | Nebraska     | Jason Skold       | Missouri River Program Manager, The Nature Conservancy                                    |
| Environmental/Conservation                  | Nebraska     | George Cunningham | Missouri River Basin Group Delegate, Missouri Valley Group, Sierra Club                   |
| Environmental/Conservation                  | Nebraska     | Chad Smith        | Director, Nebraska Field Office, American Rivers  |
| Multi-Focus                                 | Missouri     | Dan Fuhrman       | Chairman, Schutte Lumber Company/ MO-ARK  |
| Multi-Focus                                 | Missouri     | Steve Taylor      | Chairman, Coalition to Protect the Missouri River   |
| Multi-Focus                                 | Missouri     | Randy Asbury      | Executive Director, Coalition to Protect the Missouri River                               |

| <b>Interest</b>           | <b>State</b> | <b>Name</b>    | <b>Organization/Affiliation</b>   |
|---------------------------|--------------|----------------|---|
| Multi-Focus               | Missouri     | Bob Bacon      | Former Interim Director, Coalition to Protect the Missouri River  |
| Navigation/Terminals      | Iowa         | Kevin Nepper   | General Manager, Big Soo Terminal   |
| Navigation/Terminals      | Iowa         | Bill Beacom    | Passenger Vessel Association  |
| Navigation/Terminals      | Missouri     | Bill Jackson   | General Manager, Agriservices of Brunswick  |
| Navigation/Terminals      | Missouri     | Lynn Muench    | Vice President – Midcontinent, American Waterways   |
| Navigation/Terminals      | Missouri     | Paul Davis     | Interstate Marine Terminal, Inc.  |
| NGO                       | Iowa         | Skip Meisner   | Retired Executive Director, Sioux Land and Inter State Metro Planning Council (SIMPCCO)   |
| Power                     | Region       | Tom Graves     | Mid-West Electric Consumers Association   |
| Power                     | Missouri     | Darrell Dorsey | Manager of Electric Production, Kansas City Board of Public Utilities   |
| Power                     | Montana      | Tom Huntley    | Manager, Central Montana Electric Power Cooperative   |
| Power                     | Nebraska     | Brian Barels   | Water Resources Manager, Nebraska Public Power District   |
| Recreation                | North Dakota | Lee Klapprodt  | Missouri River Coordinator, Board of Directors, ND Sportfishing Congress Member (Recreation), Board of Directors, Friends of Lake Sakakawea |
| Recreation/Municipalities | Nebraska     | Kim Harman     | Acting Director of the City of Omaha Department of Parks & Recreation   |
| State                     | Iowa         | Harold Hommes  | Director of Marketing, Department of Agriculture and Land Stewardship   |
| State                     | Iowa         | Mike McGhee    | Department of Natural Resources – Coordinator of Rivers and Lakes Program   |
| State                     | Kansas       | David Barfield | Manager of Interstate Water Issues, Department of Agriculture, Division of Water Resources  |
| State                     | Kansas       | David Pope     | Chief Engineer, Department of Agriculture, Division of Water Resources  |
| State                     | Missouri     | Mike Wells     | Director, Department of Natural Resources   |
| State                     | Missouri     | Denise Garnier | Assistant Director, Department of Conservation  |
| State                     | Missouri     | Dan Engemann   | Assistant to the Director, Department of Agriculture  |
| State                     | Missouri     | Brian Weiler   | Multimodal Director, Department of Transportation   |
| State                     | Missouri     | Sherrie Martin | Waterway Program Manager, Department of Transportation  |
| State                     | Missouri     | Bill Bryan     | Deputy Chief Counsel of the Agriculture and Environment Division, Attorney General's Office   |
| State                     | Montana      | Ken McDonald   | Management Bureau Chief, Fish, Wildlife & Parks Fisheries Division  |

| <b>Interest</b> | <b>State</b> | <b>Name</b>       | <b>Organization/Affiliation</b>  |
|-----------------|--------------|-------------------|--|
| State           | Montana      | Tim Bryggman      | Water Management Bureau Economist, Department of Natural Resources & Conservation                        |
| State           | Montana      | Mary Sexton       | Director of MT, DNRC (water agency)  |
| State           | Nebraska     | Ann Bleed         | Acting Director, Department of Natural Resources   |
| State           | Nebraska     | David Cookson     | Special Counsel, Attorney General's Office   |
| State           | Nebraska     | Roger Patterson   | Retired Director, Department of Natural Resources  |
| State           | Nebraska     | Kirk Nelson       | Assistant Director, Game & Parks   |
| State           | Nebraska     | Gene Zuerlein     | Game & Parks Commission  |
| State           | Nebraska     | Don Nelson        | State Director, U.S. Senator Ben Nelson Office   |
| State           | North Dakota | John Cooper       | Secretary, Department of Fish, Game, and Parks   |
| State           | North Dakota | Todd Sando        | Assistant State Engineer, State Water Commission   |
| State           | North Dakota | Dale Frink        | State Engineer, Director State Water Commission  |
| State           | South Dakota | Garland Eberle    | Chief Engineer, Water Rights, Department of Environment and Natural Resources                            |
| State           | South Dakota | Jack Erickson     | Missouri River Fisheries Center, Department of Game, Fish & Parks  |
| State           | South Dakota | Mark Rath         | Natural Resources Engineer, Surface Water, Water Rights, Department of Environment and Natural Resources |
| State           | Wyoming      | Jodee Pring       | Water Planning Coordinator, State Engineers Office   |
| State           | Wyoming      | Sue Lowry         | Interstate Streams Administrator, State Engineers Office   |
| Tribal          | Tribal       | Rebecca Kidder    | Tribal Attorney, Cheyenne River Sioux Tribe  |
| Tribal          | Tribal       | Deb Madison       | Assiniboine and Sioux Tribes of Fort Peck  |
| Tribal          | Tribal       | Dawnette Owens    | Mini Sose Intertribal Water Rights Coalition Program Coordinator   |
| Tribal          | Tribal       | Edgar Bear Runner | Tribal Council Member Oglala Sioux Tribe   |
| Tribal          | Tribal       | John Bechen       | Natural Resources Office, Flandreau Santee Sioux Tribe   |
| Tribal          | Tribal       | Gary Collins      | Mini Sose Delegate, Northern Arapaho Tribe   |

| <b>Interest</b> | <b>State</b> | <b>Name</b>          | <b>Organization/Affiliation</b>  |
|-----------------|--------------|----------------------|--|
| Tribal          | Tribal       | Paul Danks           | Natural Resources Administrator, Mandan, Hidatsa & Arikara (MHA) Nation  |
| Tribal          | Tribal       | Tony Provost         | Environmental Protection Director, Omaha Tribe President, Mni Sose Coalition                                       |
| Tribal          | Tribal       | Pemina Yellow Bird   | Acting Tribal Historic Preservation Officer, MHA Nation  |
| US ACE          | Federal      | George Dunlop        | Principal Deputy Assistant Secretary of the Army (Civil Works), US Army Corps of Engineers                         |
| US ACE          | Federal      | Michael George       | PM for BiOp Implementation, US ACE   |
| US ACE          | Federal      | Col. Jeffrey Bedey   | Commander and District Engineer of the Omaha District, US Army Corps of Engineers                                  |
| US ACE          | Federal      | Larry Cieslik        | Chief, Mo Riv Water Management   |
| US ACE          | Federal      | Jody Farhat          | Water Management, Omaha Division   |
| US ACE          | Federal      | John Seeronen        | Legal Council, Portland  |
| USBOR           | Federal      | Maryanne Bach        | Former Regional Director, Great Plains Region  |
| US BOR          | Federal      | Mike Collins         | US BOR, Great Plains Region, Montana Area Office   |
| US BOR          | Federal      | Jerylin Beek         | Manager for Water and Environmental Resources, Office of Program and Policy Services                               |
| US BOR          | Federal      | Don Moomaw           | Assist. Regional Director, Great Plains Region   |
| US EPA          | Federal      | Jim Berkeley         | Missouri River Coordinator, Resource Protection and Stewardship Unit, US EPA Region VIII system Protection Program |
| US EPA          | Federal      | Joe Cothorn          | NEPA Team Leader, Environmental Services Division, US EPA Region VII   |
| US EPA          | Federal      | Gale Hutton          | Director, Environmental Services Division, US EPA Region VII   |
| US EPA          | Federal      | John Houlihan        | Environmental Monitoring & Water Compliance Branch, Environmental Services Division, US EPA Region VII             |
| US FWS          | Federal      | Gary Frazer          | USFWS Liaison to the USGS, research coordination   |
| US FWS          | Federal      | Robyn Thorson        | Regional Director, Midwest Region, U.S. Fish and Wildlife Service  |
| US FWS          | Federal      | Wayne Nelson-Stastny | MRNRC Coordinator, USFWS<br>Former Senior Fishery Biologist, SDGF&P (State)  |

| <b>Interest</b> | <b>State</b> | <b>Name</b>     | <b>Organization/Affiliation</b>   |
|-----------------|--------------|-----------------|---|
| US FWS          | Federal      | Charlie Scott   | Field Supervisor, Ecological Services, Region III   |
| US FWS          | Federal      | Michael Olson   | USFWS, Region III   |
| US FWS          | Federal      | Mitch King      | Region 6 Director (USFWS coordinator for Missouri River)  |
| US FWS          | Federal      | Chris Nolin     | Chief, Division of Candidate Conservation and Listing, Endangered Species, Washington (acting Assistant Regional Director, Ecological Services, Region 6) |
| US FWS          | Federal      | rick Sayers     | Chief, Division of Consultation, Habitat Conservation Plans, Recovery and State Grants, Endangered Species, Washington                                    |
| US FWS          | Federal      | Marjorie Nelson | Chief, Branch of Consultation and Habitat Conservation Plans, Endangered Species, Washington  |
| US FWS          | Federal      | Renne Lohofener | Assistant Director, Endangered Species, Washington  |
| US NPS          | Federal      | Sue Jennings    | Wild and Scenic Rivers Coordinator, National Park Service – Midwest Regional Office   |
| WAPA            | Federal      | Nick Stas       | Regional Environmental Manager  |
| WAPA            | Federal      | Bob Riehl       | Regional Power Marketing Manager  |

## **APPENDIX 6: Results of Background Research on Similar Multiparty Initiatives to Address Recovery Issues**

### **Mandates, focus and authorities of the organizations**

- ◆ ***Recovery Implementation Program – Upper Colorado River Basin*** – The mandate and focus of this initiative was fairly narrow – “to recover and de-list the three endangered species and to manage the razorback sucker so it would not need the protection of the Endangered Species Act” (The Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin, U.S. Department of the Interior, Fish and Wildlife Service, Region 6, Denver, Colorado, September 29, 1987, p 2.1); “identify reasonable and prudent alternatives that would preserve the (endangered) species, while permitting new water development to proceed in the Upper Basin.” (IBID, p 1.6). Later expanded to “a comprehensive program is needed to implement a broad range of measures designed not only to preserve the listed species but to ensure their full recovery and eventual delisting under the Endangered Species Act” (IBID, p 1.6).
- ◆ ***Lower Colorado River Multi – Species Conservation Plan (MSCP)*** – The MSCP’s purposes are to (1) protect the lower Colorado River environment while ensuring the certainty of existing river water and power operations; (2) address the needs of threatened and endangered wildlife under the Endangered Species Act; and (3) prevent the listing of additional species on the lower Colorado River. The MSCP covers areas up to and including the full-pool elevations of Lakes Mead, Mohave and Havasu and the historical floodplain of the Colorado River from Lake Mead to the United States-Mexico Southerly International Boundary, a distance of about 400 river miles. Conservation measures currently focus on the area from Hoover Dam to the border. The LCR MSCP is unique in that it provided Section 7 coverage under the ESA for Federal actions and Section 10 coverage for nonFederal actions.
- ◆ ***Platte Cooperative Agreement*** – This initiatives’ mandate is to “Implement certain aspects of the U.S. Fish and Wildlife Service’s recovery plans for the target species that relate to their associated habitats by providing for the following during the term of this Cooperative Agreement:
  1. Implementation of research, analysis and other measures that will benefit the target species and their associated habitats, as set forth in Attachment I, "Milestones for the Cooperative Agreement";
  2. Implementation of efforts to acquire, restore, and manage land or interests in land so as to provide and improve associated habitats for the target species, as set forth in Attachment I, "Milestones for the Cooperative Agreement";
  3. Development and implementation of certain water management, conservation and supply measures, as set forth in Attachment I, "Milestones for the Cooperative Agreement" and in Attachment II, "Water Conservation/Supply Component";

4. development of a Basin-wide program to be implemented following evaluation of the Proposed Alternative, as defined in Paragraph III and as set forth in Attachment III, and a range of reasonable alternatives in compliance with the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4331 *et seq.*, and the ESA, the intent of which is to: (1) secure defined benefits for the target species and their associated habitats to assist in their conservation and recovery through a Basin-wide cooperative approach that can be agreed to by the three states and DOI; and (2) serve as the reasonable and prudent alternative to offset the effects of existing and new water related activities.”

- ◆ ***South Florida Ecosystem Restoration Task Force*** – Restoring the South Florida ecosystem requires the cooperation and coordination of multiple Federal, state, Tribal and local organizations. In recognition of the need for intergovernmental collaboration, Congress established the South Florida Ecosystem Restoration Task Force (Task Force) in the Water Resources Development Act (WRDA) of 1996, and codified the following duties: (1) coordinate the development of consistent policies, strategies, plans, programs, projects, activities, and priorities addressing the restoration, preservation, and protection of the South Florida ecosystem; (2) exchange information regarding programs, projects and activities of the agencies and entities represented on the Task Force to promote ecosystem restoration and maintenance; (3) facilitate the resolution of interagency and intergovernmental conflicts associated with the restoration of the South Florida ecosystem among the agencies and entities represented on the Task Force; (4) coordinate scientific and other research associated with the restoration of the South Florida ecosystem; and (5) provide assistance and support to agencies and entities represented on the Task Force in their restoration activities. A Florida-based Working Group and Science Coordination Group assisted the Task Force in fulfilling its responsibilities.

In addition to the duties specified in the WRDA of 1996, the charter establishing the South Florida Ecosystem Restoration Task Force spells out the administrative and personnel support to the Task Force. The 2003 Programmatic Regulations for the Comprehensive Everglades Restoration Plan specify that the Task Force will be notified and given an opportunity to review and provide consultation on specific programmatic and project level activities.

### **The Organizational Structure of Initiatives**

- ◆ ***Recovery Implementation Program – Upper Colorado River Basin*** – The foundation of this program is a cooperative agreement among the Secretary of the Interior and the Governors of the three upper-Basin states enacted under the statutory authority of the Endangered Species Act. The agreement established an Implementation Committee composed of Federal, state and nongovernmental organizations. The latter – water development associations and conservation groups – entered into a Supporting Resolution that sets out the respective parties’ expectations and responsibilities for the program’s provisions.

Committee members include representatives of the U.S. Fish and Wildlife Service, U.S. Bureau of Reclamation, National Park Service, Western Area Power Administration, State of Colorado, State of Utah, State of Wyoming, The Nature Conservancy, Western Resource Advocates, Colorado Water Congress, Utah Water Users Association, Wyoming Water Development Association and the Colorado River Energy Distributors Association.

- ◆ ***Lower Colorado River Multi – Species Conservation Plan*** – This initiative was created by a Memorandum of Agreement (MOA) among involved parties that created a multi-stakeholder process. The Steering Committee is a broad-based state/Federal/Tribal/private regional partnership, which includes water, hydroelectric power and wildlife management agencies in Arizona, California and Nevada. The stakeholders include the U.S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, Bureau of Indian Affairs, and National Park Service; Arizona Department of Water Resources and Arizona Game and Fish Department; Colorado River Board of California and California Department of Fish and Game; Colorado River Commission of Nevada and Nevada Division of Wildlife; Chemehuevi, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort Mojave Indian Tribe, Fort Yuma Quechan Tribe, and Hualapai Tribe; and the Arizona Power Authority, Central Arizona Project, Coachella Valley Water District, Los Angeles Department of Water and Power, Imperial Irrigation District, Metropolitan Water District of Southern California, Nevada Power Company, Overton Power District No. 5, Palo Verde Irrigation District, San Diego County Water Authority, Silver State Power, Southern California Public Power Authority, Southern Nevada Water Authority, Valley Electric Association, Wellton-Mohawk Irrigation and Drainage District, Southern California Edison, San Diego Gas and Electric, Pacific Gas and Electric, and Trout Unlimited/Bass Anglers Sportsman Society.
- ◆ ***Platte Cooperative Agreement*** – This initiative is based upon a cooperative agreement between the Department of the Interior and the States of Colorado, Nebraska and Wyoming. It has a ten-member Governance Committee with one member per signatory state, selected by Governor of each state; two Federal members (U.S. Fish and Wildlife Service and U.S. Bureau of Reclamation) selected by the Secretary of Interior; two environmental members representing environmental entities in the three states; one member representing water users on the South Platte above the Western Canal Diversion; and one member representing water users downstream of Lake McConaughy or the Western Canal. Each representative has an alternate. The Committee has an external executive director, and organization that provides technical assistance.
- ◆ ***South Florida Ecosystem Restoration Task Force*** – This Task Force consists of 14 members from four sovereign entities: seven Federal agencies (U.S. Department of the Interior, U.S. Department of Agriculture, U.S. Department of Justice, U.S. Department of Transportation, U.S. Department of Commerce (National Oceanic and Atmospheric Administration), U.S. Department of the Army (Corps of Engineers) and the Environmental Protection Agency); two Tribal representatives (Miccosukee

Tribe of Indians of Florida and Seminole Tribe of Florida); and five state and local government representatives (Florida Department of Environmental Protection, Executive Office of the Governor, City of South Bay, Miami-Dade County, and South Florida Water Management District).

The Task Force is led by a chair and vice chair. It is assisted by an executive director, two advisory committees, a Working Group (with issue and regional-based task teams), and a Science Coordination Group. The executive director is appointed by the Secretary of the Interior and is an employee of the U.S. Department of the Interior. The WRDA of 1996 designates the Secretary of the Interior as the chair of the Task Force. A protocol adopted in 2001 specified the appointment of a non-Federal vice-chair. Project Development Teams (PDTs), composed of participants with technical expertise from Federal, Tribal, state, regional, and local governmental entities, have been established for some specific projects. The most notable has been the Combined Structural and Operating Plan (CSOP) PDT, which has engaged in a collaborative NEPA process to model ecosystem and hydrologic systems, develop and evaluate benefits and impacts of alternative water management scenarios according to the performance measures they established, and then negotiate a recommendation on a preferred alternative. Throughout its work together, the PDT has received advice and feedback on draft products from a multi-stakeholder Combined Structural and Operating Plan (CSOP) Advisory Team that was established by the Task Force to assist the governmental entities in developing recommendations to the Corps of Engineers.

### **The use of Facilitators or Chairpersons**

- ◆ ***The Recovery Implementation Program – Upper Colorado*** – Meetings are chaired by a Chairperson, who is generally from a Federal agency.
- ◆ ***The Lower Colorado River Multi – Species Conservation Plan*** – The Steering Committee has been facilitated/mediated. Collaborative decision making consultants provided group facilitation and meeting management, including a record of the negotiations. They also mediated on and off throughout the process.
- ◆ ***The Platte River Cooperative Agreement*** – This group uses a chair who is a Federal agency representative for formal Governance Committee meetings to pass policy recommendations. An internal facilitator from a consulting firm is used for general discussions, and an external mediator has been used on several occasions to break deadlocks on contested issues.
- ◆ ***The South Florida Ecosystem Restoration Task Force*** – The Task Force and its sub – groups have routinely used facilitators as circumstances warrant. The U.S. Institute for Environmental Conflict Resolution provided critical interagency mediation assistance in reaching some interim agreements on how to address endangered species issues. This effort eventually led to the formation of an intergovernmental Project Development Team (PDT) for the Combined Structural and Operating Plan

(CSOP) that has been engaging in a facilitated collaborative NEPA process. A multi-stakeholder CSOP Advisory Team represents the most recent example of the role of facilitators involved in the work of the Task Force. The Florida Conflict Resolution Consortium works with the Team to facilitate discussion and assist members in reaching agreement on recommendations to the CSOP Project Development Team, for incorporation into the NEPA analysis. Other sub-teams chartered to assist the Task Force and its Working Group, such as the Biscayne Bay Regional Restoration Coordination Team, also use neutral entities to carry out the function of facilitation and mediation in an effort to reach consensus.

### **Deliberative and decision making roles and procedures**

- ◆ ***Recovery Implementation Program – Upper Colorado River Basin*** – Consensus is the process used for deliberations and decision making.
- ◆ ***Lower Colorado River Multi – Species Conservation Plan*** – The intent of the Steering Committee is to reach consensus. If consensus cannot be achieved participants used a voting procedure (which is spelled-out in the MOA). To the extent that the Steering Committee achieves consensus, the consensus recommendation was included in the final conservation plan.
- ◆ ***Platte Cooperative Agreement*** – Consensus and voting are both used. Voting is required for decisions on policy issues and a decision requires a super-majority (9 out of 10 representatives of all states, Federal Agencies and three other members). Consensus is used to reach decisions on most issues. Consensus decisions are then formally approved by voting.
- ◆ ***South Florida Ecosystem Restoration Task Force*** – From its inception the Task Force has sought to achieve consensus among its members as it carries out its duties. The voting protocol reinforces this preference for consensus when approving final reports or making recommendations to decision making bodies. When complete consensus is not possible, the group takes final actions by a two-thirds majority vote. Dissenting members have the opportunity to submit a minority report.

### **How relevant and acceptable Data was obtained**

- ◆ ***Recovery Implementation Program – Upper Colorado River Basin*** – Parties set up a data management system and quality control system. Data is provided by parties. A research plan jointly defined by USFWS and states, which is approved by Implementation Committee.
- ◆ ***Lower Colorado River Multi – Species Conservation Plan*** – The Steering Committee used subcommittees to address scientific and technical issues. The Steering Committee hired, through an open, competitive process, a consulting firm to help develop the scientific and technical information and compliance documents.

- ◆ ***Platte Cooperative Agreement*** – Data is provided primarily by Federal agencies and states, and on occasion by non-governmental parties and independent technical consulting groups.
- ◆ ***South Florida Ecosystem Restoration Task Force*** – The Task Force uses a multi-agency Restoration Coordination and Verification (RECOVER) Team to evaluate and assess the actual performance of implemented restoration projects and to ensure that a system-wide perspective and approach is maintained throughout the restoration program, while pursuing an Adaptive Management approach to continuous improvement to the overall ecosystem restoration plan.

### **Funding Mechanisms**

- ◆ ***Recovery Implementation Program – Upper Colorado River Basin*** – Funding is by the Federal government, as well as States of Colorado, Utah and Wyoming, power and water users and private donations. Receives Congressional appropriation. New water projects also contribute to recovery program.
- ◆ ***Lower Colorado River Multi – Species Conservation Plan*** – Funding for the stakeholder process is split 50-50, with the Federal government providing one-half of the funds, and non-Federal partners providing the other half. The program development costs were \$7.4 million for planning needs and implementation of interim conservation measures.
- ◆ ***Platte Cooperative Agreement*** – Funding is by the Department of Interior and the three states (Colorado, Nebraska and Wyoming). The states provided cash and cash-equivalent contributions.
- ◆ ***South Florida Ecosystem Restoration Task Force*** – Members of the Task Force retain full authority and jurisdiction for their traditional responsibilities including the responsibility for funding the implementation of their restoration projects. An initial estimate indicated that CERP implementation will cost in 1999 constant dollars \$7.8 billion; and that an additional \$182 million will be needed annually to operate, maintain and monitor the plan. The Federal government and the State of Florida split the cost.

Conclusions from the above research have been integrated with the findings from interviews, and combined in a series of recommendations from the CDR Team that are presented in the Situation Assessment Report.

## **APPENDIX 7: Polling and Polling Results**

### **RESULTS OF POLL ON POTENTIAL CATEGORIES FOR STAKEHOLDER REPRESENTATION AND MEMBERSHIP ON THE MISSOURI RIVER RECOVERY IMPLEMENTATION COMMITTEE (MRRIC)**

Dear participants in the poll on potential representation and membership categories for MRRIC:

Last week, the final comments on the poll to gain input on possible membership categories for non-Federal, Tribal and State (non-FTS) members were received, and have now been analyzed. Described below are the results of the poll, an analysis of comments on the categories and recommended changes. Also attached is the raw data so that you can analyze it yourself if you want to.

We will follow this report on poll results with another poll that will be sent out later today to determine if proposed changes to categories are more acceptable.

#### **Who was in the Polling Sample and why these people were selected?**

The individuals that were polled are people who have been highly involved in Missouri River recovery issues. Repeatedly the CDR Team has been told that the parties who are most informed or involved on potential issues to be addressed by MRRIC have been participants in the Spring Rise facilitation, those who attended the presentation of the Draft Situation Assessment Report on February 28th, and those who had been recommended for and were interviewed for that report. However, we determined to cast the net wider for additional views. To do this we used e-mail lists developed by both the COE and the U.S. Institute to keep stakeholders informed of Spring Rise and MRRIC activities. This list includes all people who registered on the U.S. Institute's web site to receive information on MRRIC. The final poll was sent to a total of 376 people. 97 responded to the poll, indicated their degree of support for categories and provided comments. Three others people to whom the poll was sent responded by e-mail to the proposed poll, but declined to fill it out.

#### **On what issues did we want input, why and how were proposed categories developed?**

At the meeting on the Draft Situation Assessment on February 28<sup>th</sup>, a number of participants indicated that some process of polling potential stakeholders should be undertaken to determine stakeholder views on potential representation and membership

for non-FTS stakeholders on MRRIC. If there was significant support for specific categories, this information could be used by non-FTS as a means to determine how many seats to allocate at the table to each stakeholder group.

Proposed categories in the poll were based on a combination of authorized uses for the river, other Federal laws that impact river management and input from those interviewed in the situation assessment.

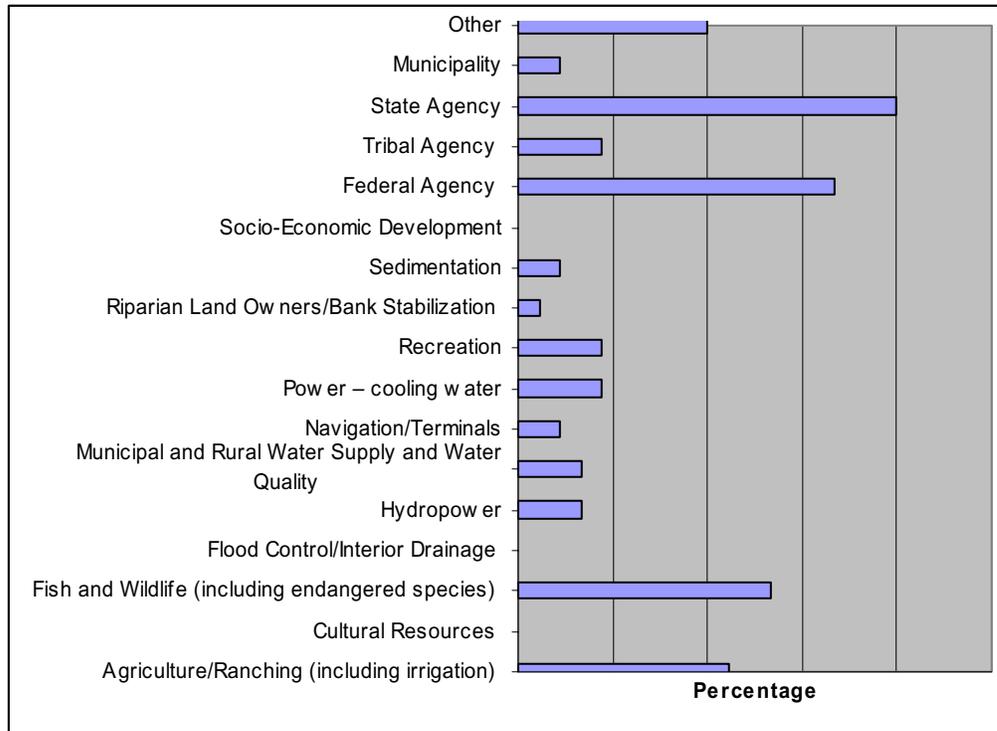
The first poll on categories for representation and membership of non-FTS members of MRRIC was sent out to all stakeholders-non-governmental interest groups, municipalities and Federal, Tribal and state representatives..

### **Who Participated in the Poll?**

99 people responded to and filled out the questions on the poll. A breakdown of poll participants and their affiliations is listed below.

| <b>CATEGORY</b>  | <b>Response Percent</b> | <b>Response Total</b> |
|--|-------------------------|-----------------------|
| Agriculture/Ranching (including irrigation)  | 11.11%                  | 10                    |
| Cultural Resources   | 0.00%                   | 0                     |
| Fish and Wildlife (including endangered species)   | 13.33%                  | 12                    |
| Flood Control/Interior Drainage  | 0.00%                   | 0                     |
| Hydropower   | 3.33%                   | 3                     |
| Municipal and Rural Water Supply and Water Quality   | 3.33%                   | 3                     |
| Navigation/Terminals   | 2.22%                   | 2                     |
| Power-cooling water  | 4.44%                   | 4                     |
| Recreation   | 4.44%                   | 4                     |
| Riparian Land Owners/Bank Stabilization  | 1.11%                   | 1                     |
| Sedimentation  | 2.22%                   | 2                     |
| Socio-Economic Development   | 0.00%                   | 0                     |
| Federal Agency<br><ul style="list-style-type: none"> <li>◆ NPS</li> <li>◆ USACE</li> <li>◆ WAPA</li> <li>◆ USGS</li> <li>◆ US FWS</li> </ul> | 16.67%                  | 15                    |

|   |        |                          |
|---|--------|--------------------------|
| Tribal Agency<br><ul style="list-style-type: none"> <li>◆ Cheyenne River Sioux Tribe</li> <li>◆ Mni Sose Intertribal Water Rights Coalition</li> <li>◆ Omaha Tribe of Nebraska and Iowa</li> <li>◆ MHA Nation</li> </ul>  | 4.44%  | 4                        |
| State Agency<br><ul style="list-style-type: none"> <li>◆ Iowa</li> <li>◆ Kansas</li> <li>◆ Missouri</li> <li>◆ Montana</li> <li>◆ Nebraska</li> <li>◆ North Dakota</li> <li>◆ South Dakota</li> <li>◆ Wyoming</li> </ul>  | 20.00% | 18                       |
| Municipality<br><ul style="list-style-type: none"> <li>◆ City of Pierre, SD</li> <li>◆ Regional Council of Governments</li> </ul>   | 2.22%  | 2                        |
| Other<br><ul style="list-style-type: none"> <li>◆ Diverse Interests</li> <li>◆ Congressional Uses</li> <li>◆ Multi-Use</li> <li>◆ Legal Representative</li> <li>◆ Education/Adaptive Management</li> <li>◆ General Env. Quality</li> <li>◆ Joint Water Board</li> </ul> | 10.00% | 9                        |
| <b>TOTAL RESPONDENTS</b><br><b>(Total Non – Federal, State, Tribal)</b>   |        | <b>90</b><br><b>(53)</b> |
| <b>(skipped this question)</b>  |        | <b>9</b>                 |



It should be noted that 9 respondents who filled out the poll did not identify either their name or affiliation.

Additionally we received e-mails back from three participants who declined to participate. One of them did not complete the poll because he/she believed that MRRIC should be an open forum with anyone with a stake in the river allowed to participate. (Note: this proposed approach is more of a public input process than one that builds consensus. MRRIC will definitely contain a robust public participation process.)

The two other people declined to participate because they were Federal agency employees from outside of the Missouri River Basin. They believed that only parties in the basin should participate in the poll.

### **What were the Responses to the Proposed Categories for non-Federal, Tribal and State membership in MRRIC**

Responses to almost all proposed categories in the poll were high. Five out of ten proposed categories received approval rates of 90% or above. An additional four categories received 80% support or above. Only one category, socio-economic development received a rating below 80%, a rating of 76%. These responses indicate significant support from a broad cross section of stakeholders.

A breakdown of support and non-support for each proposed category for membership in MRRIC, and the number of respondents in each category as identified by their own stakeholder group affiliation are detailed below.

|  | <b>Support Category for Membership on MRRIC</b> | <b>Do not support Category for Membership on MRRIC</b> | <b>Response Total</b> |
|--|---|--|-----------------------|
| Agriculture/Ranching (including irrigation)  | <b>91% (90)</b>                                 | 9% (9)   | <b>99</b>             |
| Cultural Resources   | <b>83% (82)</b>                                 | 17% (17)   | <b>99</b>             |
| Fish and Wildlife (including endangered species)   | <b>81% (80)</b>                                 | 19% (19)   | <b>99</b>             |
| Flood Control/Interior Drainage  | <b>91% (90)</b>                                 | 9% (9)   | <b>99</b>             |
| Hydropower   | <b>94% (93)</b>                                 | 6% (6)   | <b>99</b>             |
| Water Supply and Quality – Municipal and rural (including cooling water for power generation and sedimentation issues) | <b>94% (93)</b>                                 | 6% (6)   | <b>99</b>             |
| Navigation and Terminals   | <b>92% (91)</b>                                 | 8% (8)   | <b>99</b>             |
| Recreation   | <b>90% (89)</b>                                 | 10% (10)   | <b>99</b>             |
| Riparian Land Owners/Bank Stabilization  | <b>86% (85)</b>                                 | 14% (14)   | <b>99</b>             |
| Socio-Economic Development   | <b>76% (75)</b>                                 | 24% (24)   | <b>99</b>             |
| <b>Total Respondents</b>   |   |  | <b>99</b>             |

The above ratings, with a few exceptions, indicate general support for the proposed categories. However, we decided to explore further what concerns respondents to all proposed categories had with them, and whether with further refinement all of the categories might be improved and receive higher ratings. To make a determination regarding whether or how proposed categories might be changed so that they would receive even higher levels of support, we turned to an analysis of the comments provided by poll respondents. Our hope was that these comments might provide useful suggestions for how proposed categories could be modified, combined or eliminated.

### **What were concerns about proposed Categories for Membership in MRRIC**

In conducting our analysis of each proposed category and those who provided comments, we examined why a broad majority of respondents supported specific categories and what concerns they had about others.

#### ***General comments from the Poll***

- ◆ Three poll respondents rejected all categories in the poll. Of those who identified themselves, all were from lower basin agriculture or socio-economic interests. The reasons they objected to the proposed categories were 1) they believed that anyone in the basin with a stake in the river should be allowed to be involved with the caveat that members should not be receiving a salary for participation from State or Federal taxes, 2) States should not be involved because they have other means of input on recovery issues (The agency Coordinating Team, MoRAST, MRBA, MRNRC); that States have a conflict of interest because they could receive money as a result of MRRIC's deliberations for State implemented research or recovery efforts, that Federal agencies should not be involved in decision making or recommendations and that potential stakeholders are "not sheep."
- ◆ The category of socio-economic development received the lowest level of support, 76%. Comments by respondents indicated that this category of interests could be represented by stakeholders in other categories and that this category could or should be eliminated.
- ◆ Comments on the Cultural category indicated a lack of clarity on the part of respondents regarding what interest was to be met by this category of membership and who should be the advocate for it. Suggestions included expanding the definition and distinguishing it from Tribal concerns that would be met by Tribal representatives on MRRIC and having it represented by Federal agencies. Respondents did not address how this form of representation would meet the interests of non-Federal governmental stakeholders who hold this interest.
- ◆ The Fish and Wildlife category received support of 81%. The majority of those who did not support this category identified themselves as stakeholders from agriculture, navigation or did not identify themselves as belonging to any category. Comments

explaining the lack of support referred to disagreement with the ESA, belief that F&W interests were being placed above other interests, and that these interests were already being represented by Federal and State agencies. Comments did not address how non-governmental conservation or environmental stakeholders would have a seat at the table if this category was eliminated.

Other respondents indicated that the F&W category, which had included endangered species interests, should be separated into two categories to reflect that these are different issues and may be represented by different non-governmental stakeholder groups. They also noted this category should be divided into two in order to give these interests similar weight to other of interests which have many more categories for membership.

- ◆ The Riparian Landowners and Sedimentation category, while receiving support in the 80's, was one for which a number of respondents suggested changes. Comments generally indicated that this interest should be combined with other categories of membership.
- ◆ One respondent indicated that organizations with multiple focuses or purposes did not fit into just one category.

### **A Proposal for Re-organization of Categories for Membership in MRRIC**

Based on the numerical results of the poll and comments received about proposed categories, we propose a revision of proposed categories. These revisions are based on authorized uses of the river, other Federal laws that are applicable to river management and interests identified by stakeholders that need to be as follows (alphabetical listing not in terms of importance). We could not and did not include all comments for category modifications, but tried to the best extent possible to revise categories and interests in them to reflect the feedback we have heard. It should be noted that when the number of seats per category in MRRIC are determined and are allocated by non-FTS stakeholders between them, the number does not have to be the same across the board for each category of membership.

Below are the proposed new categories

**Endangered Species** (Endangered species as represented by non-governmental interest groups or organizations)

**Fish and Wildlife** (Non-endangered species as represented by non-governmental conservation and environmental interest groups or organizations)

**Flood Control** (Flow related issues related to flood control, interior drainage and Lower Basin agricultural interests, bank stabilization, sedimentation and other interests of riparian landowners as represented by interest groups or organizations with the above areas of focus)

**Historic and Cultural Resources and Burial Sites** (Non-Tribal focus as represented by non-governmental interest groups or organizations with this focus. Note: Tribal interests in this area will be represented by Tribal members of MRRIC)

**Irrigation** (Water for agriculture and ranching primarily of interest to Upper Basin riparian landowners and as represented by irrigators, irrigation districts or organizations representing agricultural interests)

**Power** (Hydropower and water for cooling power plants as represented by public and private power companies)

**Navigation** (Navigation, terminal and other socio-economic interests related to shipping on the river as represented by organizations with this focus)

**Recreation** (Recreation and river-based tourism interests including but not limited to anglers, hunters, hotel/motel/lodge owners, tourism representatives, etc. as represented by interest groups or organizations with this focus)

**Water Supply and Quality** (Municipal, industrial and rural water supply and waste water discharges as represented by municipalities and other organizations with water supply and quality as a major focus)

Later today, the second poll will be sent out to solicit the opinions and degree of support for the categories listed above. If these categories receive general approval, we will proceed to send out the third polling question, early next week, to non-Federal, Tribal and State stakeholders to request their input on potential number and allocation of seats for non-Federal, Tribal and State representation on MRRIC.

Once again, thank you for your participation in the polling process.

The CDR Team

**RESULTS OF SECOND POLL ON POTENTIAL CATEGORIES  
FOR  
STAKEHOLDER REPRESENTATION AND MEMBERSHIP  
ON MRRIC  
3/31/06**

Dear MRRIC poll participants:

On Tuesday the 28<sup>th</sup>, the CDR Team received the final comments on the second poll about membership categories for non-Federal, Tribal and State (non-FTS) members on MRRIC. We analyzed your comments and summarize this analysis below.

We will send out a final electronic poll next week. This last poll will address the potential total number of members on MRRIC, allocation of seats between non-FTS stakeholder groups, and preferences for selection procedures for non-FTS stakeholder representatives.

**Who was in the Polling Sample and why were these People were selected?**

The second poll was sent to individuals who have been highly involved in Missouri River recovery issues. Repeatedly, the CDR Team has been told that the parties who are most informed or involved on potential issues to be addressed by MRRIC have been “the usual suspects”, those being participants in the Spring Rise facilitation, those who attended the presentation of the Draft Situation Assessment Report on February 28th, and those who had been recommended for and were interviewed for that report. In addition we sent the poll to e-mail lists developed by both the COE and the U.S. Institute to keep stakeholders informed of Spring Rise and MRRIC activities, and to additional individuals who were identified by poll participants after the first poll. In all, CDR e-mailed the poll to a total of 403 people.

After the second poll was sent by CDR, one of the poll participants forwarded it to a broadcast e-mail list. Thus, we received a much larger group of responses (215) than in the first poll. 44.7% of poll respondents identified themselves as from “Navigation, terminals and other socio economic interests.”

**On what Issues did we seek Input? Why and how were Proposed Categories Developed?**

The goal of the second poll was to gain additional input on the revised and more fully defined potential categories for non-Federal, Tribal and State membership on MRRIC. The categories in the second poll are based on feedback from the first poll. Proposed categories identified in the first poll were based on a combination of authorized uses for the river, other Federal laws that impact river management and input from those interviewed in the situation assessment. The categories in the second poll were defined in more detail and some interests were moved from one category to another to determine

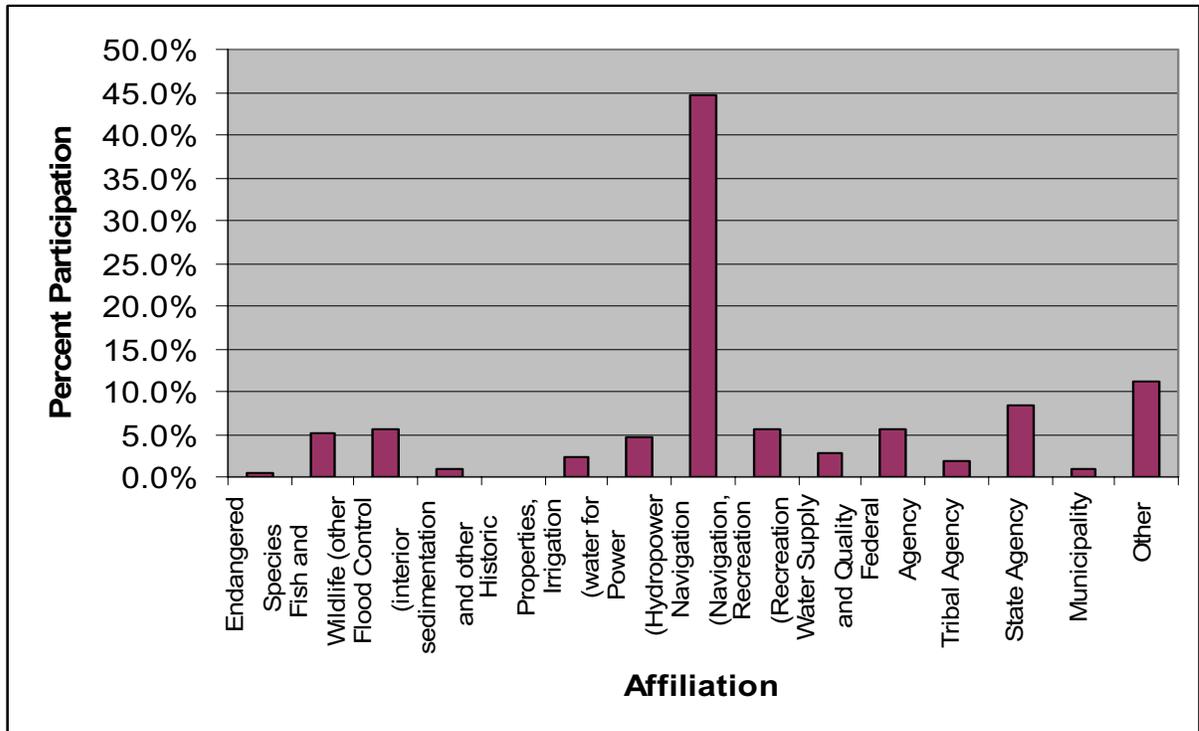
whether the revised categories better addressed and combined similar stakeholder interests.

### Who Participated in the Second Poll?

A total of 215 people participated in the second poll. However, out of the total number of respondents, 44.7% of them identified themselves as coming from “Navigation, terminal and other socio economic interests.” It should be noted that the vast majority of these respondents provided identically worded responses to all questions raised in the poll, an indication of a concerted effort on the part of the organizers of these stakeholders to voice one unvarying view on issues raised in the poll. Box 1 contains a breakdown of poll participants and their affiliations.

| <b>Box 1</b>   | <b>Response Total</b> | <b>Response Percent</b> |
|--|-----------------------|-------------------------|
| <b>Affiliation</b>   |                       |                         |
| Endangered Species   | 1                     | 0.5%                    |
| Fish and Wildlife (other than endangered species)  | 11                    | 5.1%                    |
| Flood Control (interior drainage, bank stabilization, sedimentation and other riparian landowner issues)   | 12                    | 5.6%                    |
| Historic Properties, Cultural Sites and Burial Sites (non-Tribal)  | 2                     | 0.9%                    |
| Irrigation (water for agriculture and ranching)  | 0                     | 0.0%                    |
| Power (Hydropower or water for cooling plants)   | 5                     | 2.3%                    |
| Navigation (Navigation, terminal and other socio-economic interests related to shipping)   | 10                    | 4.7%                    |
| Recreation (Recreation and river-based tourism)  | 96                    | 44.7%                   |
| Water Supply and Quality (Municipal, industrial and rural water supply and waste water discharges)   | 12                    | 5.6%                    |
| Federal Government/Agency <ul style="list-style-type: none"> <li>• NPS</li> <li>• USEPA</li> <li>• USFWS</li> <li>• USGS</li> <li>• WAPA</li> </ul>  | 6                     | 2.8%                    |
| Tribal Government <ul style="list-style-type: none"> <li>• Mni Sose Intertribal Water Rights Coalition</li> <li>• Omaha Tribe of Nebraska and Iowa</li> <li>• Work with all divisions of Tribe including water supply, Cultural and historic preservation, fish and wildlife, landowner interests, recreation,</li> <li>• Ponca Tribe of Nebraska</li> </ul> | 12                    | 5.6%                    |
| State Government/Agency <ul style="list-style-type: none"> <li>• Missouri</li> </ul>   | 4                     | 1.9%                    |
|  | 18                    | 8.4%                    |

|  |     |       |
|--|-----|-------|
| <ul style="list-style-type: none"> <li>• Montana</li> <li>• Nebraska</li> <li>• North Dakota</li> <li>• South Dakota</li> <li>• Wyoming</li> </ul>   |     |       |
| Municipality <ul style="list-style-type: none"> <li>• City of Pierre, SD</li> </ul>  | 2   | 0.9%  |
| Other <ul style="list-style-type: none"> <li>• Missouri Levee &amp; Drainage District Association</li> <li>• Environment club</li> <li>• Diverse interests of agricultural, navigational, industrial, utility and business-related entities.</li> <li>• Regional planning group</li> <li>• Legal representative</li> <li>• CPA</li> <li>• Recreation Trailer Court</li> <li>• Construction-Inspection</li> <li>• Grain shipment and flood control</li> <li>• Little Blue River Watershed Coalition/Watershed Education</li> <li>• Multi-use</li> <li>• Missouri River Technical Group</li> <li>• Agriculture</li> <li>• Port Authority</li> <li>• Farmer</li> <li>• Agriculture</li> <li>• Flood control, agriculture, navigation, water supply, sedimentation</li> <li>• Labor organization</li> <li>• Council of conservation districts</li> </ul> | 24  | 11.2% |
| <b>Total Non-Federal, Tribal and State Respondents</b>   | 181 | 84.2% |
| <b>Total Survey Respondents</b>  | 215 | 100%  |



**Box 2** above shows participation by bar graph. Note, personnel from the Corps of Engineers decided not to participate in the second poll because the agency decided that it wanted to hear participant views prior to taking a public position on the issues in question. Other Federal, Tribal and State Governments or government agencies did participate in the poll, and responded to the questions that were raised.

**What were the Responses to the Proposed Categories for non-Federal, Tribal and State membership in MRRIC?**

Because a significant number of participants in the poll came from two stakeholder groups, 44.7% from “Navigation, terminals and other socio economic interests”, and 8.4% from states, we decided to conduct a three-part analysis. First, we examined the overall or total responses to the proposed categories by poll participants. Second, we compared the overall responses to the questions with those who identified themselves as from “Navigation, terminal and other socio economic interests” stakeholders. Third we compared “State” stakeholder responses to see if there were significant differences in their answers from those of the total response.

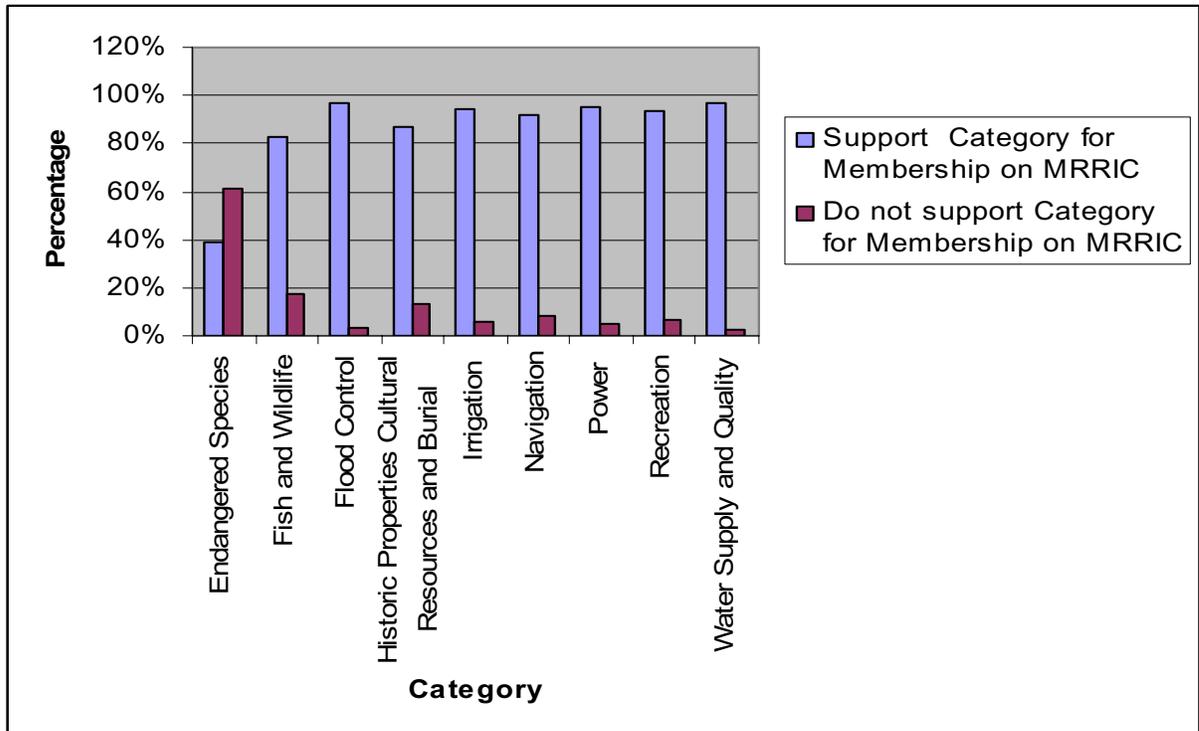
***General Response to Proposed Categories from the Total Number of Respondents***

Poll respondents highly supported almost all the proposed membership categories in the poll. Six of the nine categories proposed in the poll (Flood Control, Irrigation, Navigation, Power, Recreation and Water Supply and Quality) were supported by at least 90% of all respondents. Two other categories (Fish and Wildlife, and Historic Properties,

Cultural Resources and Burial Sites) were rated almost as high, with 83% and 87% approval respectively. The only category that received less than 80% support was Endangered Species, which only 39% of the total number of poll respondents supported.

**CDR Team Preliminary Recommendations.** The CDR Team now intends to recommend in the Final Situation Assessment Report that eight of the nine suggested categories (being those categories with greater than 80% support) be categories for membership in MRRIC. The other category, Endangered Species, and movement of specific interests between categories are addressed below. Generally, modifications to specific categories were made only when multiple respondents in the written portion of the poll suggested the same or similar changes.

|  | <b>Support<br/>Category for<br/>Membership<br/>on MRRIC</b> |     | <b>Do not support<br/>Category for<br/>Membership<br/>on MRRIC</b> |     | <b>Response Total</b> |
|--|---|-----|--|-----|-----------------------|
|  |   |     |  |     |                       |
| Endangered Species   | 84  | 39% | 131  | 61% | 215                   |
| Fish and Wildlife  | 178   | 83% | 37   | 17% | 215                   |
| Flood Control  | 208   | 97% | 7  | 3%  | 215                   |
| Historic Properties Cultural<br>Resources and Burial Sites | 187   | 87% | 28   | 13% | 215                   |
| Irrigation   | 202   | 94% | 13   | 6%  | 215                   |
| Navigation   | 197   | 92% | 18   | 8%  | 215                   |
| Power  | 204   | 95% | 11   | 5%  | 215                   |
| Recreation   | 201   | 93% | 14   | 7%  | 215                   |
| Water Supply and Quality                                   | 209   | 97% | 6  | 3%  | 215                   |



***“Navigation, terminal and socio economic interest” (Navigation) Respondents***

Ninety six respondents in the poll (44.7%) identified themselves as stakeholders from the “Navigation, terminal and socio economic interest” category. This group of poll respondents gave strong positive ratings and support, 90% or above, to seven out of nine proposed categories. Their responses to these categories were several percentage points above those recorded for the same categories by all non-“Navigation” respondents. 89.6% of the “Navigation” respondents supported the Fish and Wildlife category. Only 5.2% of this group supported the Endangered Species category.

For the most part, the responses of the “Navigation, terminals and other socio economic interest” respondents generally followed, within a few percentage points, a pattern that was similar to overall poll respondents, with the exception of the Endangered Species Category.

| NAVIGATION ONLY    |  |        |   |       |                |
|--------------------|--|--------|---|-------|----------------|
|                    | Support Category for Membership on MRRIC |        | Do not support Category for Membership on MRRIC |       | Response Total |
| Endangered Species | 5  | 5.2%   | 91  | 94.8% | 96             |
| Fish and Wildlife  | 86                                       | 89.6%  | 10  | 10.4% | 96             |
| Flood Control      | 96                                       | 100.0% | 0   | 0.0%  | 96             |

|  |    |        |   |      |    |
|--|----|--------|---|------|----|
| Historic Properties, Cultural Resources and Burial Sites | 90 | 93.8%  | 6 | 6.3% | 96 |
| Irrigation   | 95 | 99.0%  | 1 | 1.0% | 96 |
| Navigation   | 96 | 100.0% | 0 | 0.0% | 96 |
| Power  | 96 | 100.0% | 0 | 0.0% | 96 |
| Recreation   | 93 | 96.9%  | 3 | 3.1% | 96 |
| Water Supply and Quality                                 | 96 | 100.0% | 0 | 0.0% | 96 |

***State Respondents***

Eighteen state respondents (8.4%), constituted the second largest category of participants in the poll. More than 90% of all state respondents supported five of the proposed non-FTS membership categories (Fish and Wildlife, Irrigation, Flood Control, Recreation and Water Supply and Quality. 100% of state respondents supported the last three categories for membership in MRRIC. State support for other four categories (Endangered Species, Power, Navigation and Historic Properties/Cultural Resources and Burial Sites ranged from 88.9% to 83.3%.

The major difference between state respondents and the total group of respondents was stronger support for the Fish and Wildlife category, significant support for the Endangered Species category, and lesser support, but above 83% for the Navigation and non-Tribal Historic Properties/Cultural Resources and Burial Sites category.

| <b>STATES ONLY</b>                                       |   |        |  |       |                       |
|--|---|--------|--|-------|-----------------------|
|  | <b>Support Category for Membership on MRRIC</b> |        | <b>Do not support Category for Membership on MRRIC</b> |       | <b>Response Total</b> |
| Endangered Species                                       | 16  | 88.9%  | 2  | 11.1% | 18                    |
| Fish and Wildlife  | 17  | 94.4%  | 1  | 5.6%  | 18                    |
| Flood Control  | 18  | 100.0% | 0  | 0.0%  | 18                    |
| Historic Properties, Cultural Resources and Burial Sites | 15  | 83.3%  | 3  | 16.7% | 18                    |
| Irrigation   | 17  | 94.4%  | 1  | 5.6%  | 18                    |
| Navigation   | 15  | 83.3%  | 3  | 16.7% | 18                    |
| Power  | 16  | 88.9%  | 2  | 11.1% | 18                    |
| Recreation   | 18  | 100.0% | 0  | 0.0%  | 18                    |
| Water Supply and Quality                                 | 18  | 100.0% | 0  | 0.0%  | 18                    |

## **What were Concerns about the proposed new Potential Categories for Membership, and what Changes should be made?**

### ***Endangered Species and Fish and Wildlife Categories***

The Endangered Species and Fish and Wildlife categories received 66.4% and 77.3% respectively of all respondents who were not from the “Navigation, terminals and other socio economic interests” category. When the latter groups’ responses were added, the Fish and Wildlife membership category received 83% support by all respondents, but support for the Endangered Species category of membership declined to 39%. In the first poll, this category received 81% support.

A number of the respondents from multiple categories of stakeholders recommended in the second poll that the Fish and Wildlife Categories and Endangered Species categories should be combined. Their logic was that parties who represent fish and wildlife and endangered species interests are one and the same. Some of the comments received on these categories included:

- ◆ “Endangered Species and Fish and Wildlife (non-endangered species) should be combined.” (Navigation, terminal and other socio economic interests respondent)
- ◆ “Kindly combine Endangered Species and Fish and Wildlife.” (Navigation, terminal and other socio economic interests respondent)
- ◆ “I don’t want every long-haired hippie creap trying to tell me how to run my business!” (Navigation, terminals and other socio-economic interest respondent)
- ◆ “There should not be a separate category for Endangered Species and Fish and Wildlife. I view this process as being focused on ecosystem needs so these two categories should be merged into one.” (an Environmental respondent)
- ◆ “The Endangered Species and Cultural interests are already over-represented on MRRIC.” (Power stakeholder)
- ◆ “Endangered species are already represented by government representatives.” (Flood control and other riparian interests)
- ◆ “Endangered species and Fish and Wildlife should be represented by government only, not by special interest groups.” (Navigation, terminals and other socio economic interests respondent)

Based on the poll feedback, both by numbers of responses to proposed categories and written comments, and the fact that the Fish and Wildlife category received over 80% support by all respondents, the CDR Team recommends that the combined Fish and Wildlife/ESA category should be included as one of the membership categories for MRRIC. Additionally, since it appears that non-governmental stakeholders who would represent either fish and wildlife and endangered species issues may be one and the same, and at least one environmentalist in the poll suggested combining the two categories, the Endangered Species category will be combined with Fish and Wildlife. This combined category will be recommended in the Final Situation Assessment and in the next and final poll.

### ***Historic Properties, Cultural Resources and Burial Sites***

In the first poll comments on the Cultural category indicated a lack of clarity on the part of respondents regarding what interest was to be met by this category of membership and who would be the advocate for it. To address these issues, we expanded the definition, and distinguished it from Tribal concerns that would be addressed and met by Tribal representatives on MRRIC. Some of the responses to this new category include:

- ◆ “Historic properties seem to be well represented by Tribal interests at the meeting I have attended.” (Water Supply and Quality respondent– Municipal, industrial and rural water supply and waste water discharge)
- ◆ “Historic properties? It is a little bit late isn’t it”? (Recreation and River-based Tourism respondent)
- ◆ “Cultural Resources, Burial Sites and historic properties is NOT A NON-TRIBAL OR EXCLUSIVELY TRIBAL ISSUE!!!! There are State Historic Preservation Offices, non-governmental groups for historic and cultural preservation etc., and this is a specific interest that should permit all to participate for all these areas. It is ludicrous to split out ‘tribal interests’ as representing tribal concerns under the heading of tribal governments just as it would be ludicrous to exclude State Historic Preservation Officers from this category.” This needs to be remedied. (Tribal Government respondent)
- ◆ “Historic properties should be included with recreation. River boundaries have moved over centuries and trying to preserve one point in time can be expensive and create needless limitations.” (Navigation, terminals and other socio economic interests respondent)

87% of all respondents in the second poll supported this category of stakeholder membership. This category will be recommended as a MRRIC membership category in the Final Situation Assessment, and utilized in future polling.

### ***Power-Hydropower and Power Plant Cooling Water***

There was a strong recommendation from parties representing these two categories of stakeholder interests that the membership categories should be separated. It was suggested the cooling water be moved to the Water Supply and Quality category and included with municipal and industrial use. In the future, these two categories will be separated. Hydropower will be a category unto itself, and cooling water will be included in the Water Supply and Quality category.

### ***Riparian Landowner Issues, Bank Stabilization and Sedimentation***

Several comments on these issues were recorded in the poll. It was noted that sedimentation as an issue is present throughout the basin, especially as it relates to reservoirs, and that bank stabilization is extremely critical for a number of riparian landowners. Although three respondents suggested separating these categories out and creating additional categories, in the interest of keeping membership categories to a

manageable number, the CDR team will recommend that these interests be represented by individuals in the Flood Control category as this category represents flow and flow related issues. Parties selecting representatives for these categories will be encouraged to appoint at least some members for this category who will represent bank stabilization, sedimentation and other riparian landowner interests.

### ***Socio-economic Interests***

In the first poll, the proposed category of Socio-economic Development received the lowest level of support of all categories, 76%. Comments by multiple respondents in the first poll indicated that this category of interests could be represented by stakeholders in other categories and that this category could or should be eliminated.

However, a significant number of respondents in the second poll, predominantly from Navigation, terminals and other socio economic interests, agricultural and what multiple-interest organizations strongly urged that there be a socio-economic development category and that these interests could not always be subsumed under one of the other potential membership categories.

Two other respondents suggested that there be a category for multiple-interest organizations or that that there should be several at-large seats for stakeholders who represent bridging views or overarching views in the basin.

These recommendations have been taken under advisement. In the final situation assessment report, CDR will recommend that a Socio-Economic Development/At-Large Category be created to represent these broader interests.

### **A Proposal for re-organization of Categories for Membership in MRRIC**

Based on the numerical results of the second poll and comments received about proposed categories, we propose to accept all categories above the 80% level and make a number of revisions suggested by poll participants. These revisions are based on authorized uses of the river, other Federal laws that are applicable to river management and interests identified by stakeholders (listed alphabetically, not in terms of importance). We could not, and did not include all comments for category modifications, but tried to the best extent possible to revise categories and interests in them to reflect the feedback we have heard. It should be noted that when the number of seats per category in MRRIC are determined and are allocated by non-FTS stakeholders between themselves, the number does not have to be the same across the board for each category of membership.

Below are the proposed new categories

**Fish and Wildlife and Endangered Species** (Non-endangered and endangered species as represented by non-governmental conservation and environmental interest groups or organizations)

**Flood Control** (Flow related issues related to flood control, interior drainage, bank stabilization and sedimentation as represented by interest groups or organizations with the above areas of focus)

**Historic and Cultural Resources and Burial Sites** (Non-Tribal focus as represented by non-governmental interest groups or organizations with this focus. Note: Tribal interests in this area will be represented by Tribal members of MRRIC; state interests will be represented by state representatives and/or State Historic Preservation Officers)

**Irrigation** (Water for agriculture and ranching as represented by riparian landowners, irrigators, irrigation districts or organizations representing agricultural interests)

**Hydropower** (Hydropower as represented by either or both public and private power interests)

**Navigation** (Navigation, terminal and other socio-economic interests related to shipping on the river as represented by organizations with this focus)

**Recreation** (Recreation and river-based tourism interests including but not limited to anglers, hunters, hotel/motel/lodge owners, trailer/tent camps, tourism representatives, etc. as represented by interest groups or organizations with this focus)

**Water Supply and Quality** (Municipal, industrial (including water for cooling power plants), rural water supply and waste water discharges as represented by municipalities and other organizations with water supply and quality as a major focus)

**Socio Economic Development and At-Large** (Broader economic development issues in the basin and/or individuals who represent bridging interests or views)

### **Comments about the Poll in General**

Several respondents commented about the poll in general. Below are some of the comments and the CDR Team's responses.

#### ***Open versus Bounded Membership for MRRIC, and Public Involvement and Consensus Building***

One comment was that anyone who had a stake in the basin and who wanted to come to meetings should be allowed to be a member of MRRIC. *The CDR Team's Response:* There needs to be a robust public participation process for MRRIC whereby members of the public can voice their views about issues in question. However, a public involvement process is different from a consensus-building process which is what is being asked for

by the concerned agencies. A consensus-building process involves a balanced membership of diverse stakeholders, regular attendance of members over a long period of time and the use of procedures that strive to develop integrative recommendations that balance potentially competing interests. A public involvement process with an unbounded membership and meetings attended by a very large number of people is generally not a productive forum for the development of consensus.

### ***Need for Broader Input into the Poll***

A number of parties were concerned that the poll did not go out to a wide enough group of stakeholders, governments, or government agencies. The poll was intended to go to the most involved stakeholders who would be familiar with MRRIC issues, membership category questions, and selection procedures for participants in dialogues.

### **The next Poll**

In the next few days, the third poll will be sent out to solicit opinions on possible numbers of stakeholder representatives for each of the above categories and procedures to select them. We will be soliciting responses to these questions only from non-Federal, Tribal and State stakeholders. Responses will inform the CDR Team as we make changes on the Draft and complete the Final Situation Assessment Report.

Once again, thank you for your participation in the polling process.

The CDR Team

**RESULTS OF THIRD POLL ON ALLOCATION OF NON-FTS  
STAKEHOLDER REPRESENTATION ON MRRIC  
AND  
SELECTION PROCEDURES  
4/13/06**

Dear MRRIC poll participants:

Here are the results of the final poll on preferences for the allocation of “seats” and selection of non-Federal, Tribal and state (non-FTS) representatives on the future MRRIC. The CDR Team will use this information in considering what should be included in the Final Situation Assessment Report.

**Who was in the Polling Sample and why were these People were selected?**

The third poll was sent to individuals who have been highly involved in Missouri River recovery issues. It was sent to all parties who participated in previous polls (415), for their information. *However, only non-FTS stakeholders were to asked to respond and answer the questions in this poll.* We have included only responses of non-FTS stakeholders in this report.

**On what Issues did we seek Input?**

This poll sought participant preferences on:

- 1) How might “seats” on MRRIC be apportioned among potential non-Federal, Tribal and State stakeholder interest groups?*
- 2) How can potential representatives for non-Federal, Tribal and State stakeholders on MRRIC best be identified, recruited, selected and appointed?*
- 3) How often should MRRIC meet during its first year of operation?*
- 4) Should the site for MRRIC meetings be fixed at one location or move around to different parts of the basin?*

**Who Participated in the Third Poll?**

A total of 87 non-FST respondents participated in the third poll. However, only 72 respondents provided their name and identified themselves with a specific stakeholder interest group. The 15 respondents who did not provide either their name or affiliation are not included in the poll results.

It should be noted that there was very uneven participation in the poll from different membership categories. This discrepancy makes it more difficult to draw overall conclusions from the poll results.

Listed below are the number of respondents and their self identified stakeholder groups.

|   |                   |
|---|-------------------|
| To have your feedback counted and assure a fair input process, please provide us with the following information. (Your poll response will not be accepted without this data). Please identify the category below that best describes your major interest or the group/organization agency to which you belong or work for. The stakeholder/interest group you represent (Please identify the category below that best describes your major interest and/or the non-FTS group/organization with which you are affiliated or by whom you are employed. (This category must be completed for your survey to be counted.) |                   |
|   | Response<br>Total |
| Fish and Wildlife and Endangered Species  | 4                 |
| Flood Control   | 29                |
| Historic Properties, Cultural Resources and Burial Sites  | 0                 |
| Irrigation  | 2                 |
| Hydropower  | 1                 |
| Navigation  | 8                 |
| Recreation  | 6                 |
| Water Supply and Quality  | 6                 |
| Socio Economic Development  | 4                 |
| Other (Please specify)<br><ul style="list-style-type: none"> <li>◆ Agriculture</li> <li>◆ Sierra Club</li> <li>◆ Missouri River Technical Group control</li> <li>◆ MLDDA</li> <li>◆ Environmental Resources Coalition - member CPR</li> <li>◆ Regional Council of Governments</li> <li>◆ CRP</li> <li>◆ Council of Conservation Districts</li> </ul>  | 12                |
| Total Respondents   | 72                |
| (skipped this question) – Removed from all results  | 15                |

**Question # 1 - Proposed Membership Allocations for MRRIC (Between 50 and 75 members)**

Responses to the question “Please allocate 30 “seats” for prospective non-Federal, Tribal or State representatives to MRRIC among the following categories”

| <b>Membership Category</b>                              | <b>Response Total</b> | <b>Response Average (Proposed number of seats per membership category)</b> |
|---|-----------------------|--|
| Fish and Wildlife and Endangered Species                | 143                   | 1.99   |
| Flood Control   | 360                   | 5.00   |
| Historic Properties Cultural Resources and Burial Sites | 129                   | 1.79   |
| Irrigation  | 164                   | 2.28   |
| Hydropower  | 170                   | 2.36   |
| Navigation  | 295                   | 4.10   |
| Recreation  | 202                   | 2.81   |
| Water Supply and Quality                                | 231                   | 3.21   |
| Socio Economic Development                              | 254                   | 3.53   |
| At Large Representatives                                | 242                   | 3.36   |
|   |                       |  |
| Total Respondents Counted                               | 72                    |  |
|   |                       |  |
| Removed – No Affiliation                                | 15                    |  |
| (skipped this question)                                 | 0                     |  |

***Interpretation of the Data***

Because of the different numbers of poll respondents from various membership categories, a large response from one category could significantly skew final results of proposed allocation of seats. When we controlled for Flood Control respondents, the largest category of respondents, we found that their responses doubled the number of seats assigned to the Flood Control, Navigation and Socio-economic categories, and slightly increased most other categories.

When we examined responses from members of each membership category concerning the preferred number of seats that they would assign to their own membership category (without knowing what others had assigned to it), we found that the members of each membership category gave their own category more seats than would result from the averages of all poll respondents detailed in the chart above. (See chart below for these results.)

| <b>Membership Category</b>                               | <b>Average of Preferred Number of Seats by Respondents in their own Membership Category</b> | <b>Number of Category Respondents</b> |
|--|---|---------------------------------------|
| Fish and Wildlife and Endangered Species                 | 4.25  | 4                                     |
| Flood Control  | 6.00  | 29                                    |
| Historic Properties, Cultural Resources and Burial Sites |   | 0                                     |
| Irrigation   | 5.50  | 2                                     |
| Hydropower   | 4.00  | 1                                     |
| Navigation   | 5.13  | 8                                     |
| Recreation   | 5.17  | 6                                     |
| Water Supply and Quality                                 | 5.50  | 6                                     |
| Socio Economic Development                               | 4.25  | 4                                     |
| At Large Representatives                                 | 3.00  | 12                                    |
| SUM  | 42.79   | 72                                    |

**Question #2 Please allocate representatives for the categories between the upper and lower basin**

Responses to this category were not tabulated.

**Question # 3 How should potential members of MRRIC who are from non-Federal Tribal and State stakeholder groups be identified recruited selected and appointed?**

| <b>Method of Selection</b>  | <b>1<sup>st</sup> Choice</b> | <b>2<sup>nd</sup> Choice</b> | <b>3<sup>rd</sup> Choice</b> | <b>Unacceptable</b> |
|---|------------------------------|------------------------------|------------------------------|---------------------|
| 1) A caucus of each MRRIC membership category meets separately and selects its own representatives: Multiple caucuses composed of members of non-FTS stakeholders in the membership categories described above would meet select and appoint their allocated number of representatives to MRRIC.  | 17<br>(24%)                  | 15<br>(21%)                  | 7<br>(10%)                   | 31 (44%)            |
| 2) Representatives of all MRRIC membership categories meet establish a procedure and select: A large open meeting attended by any concerned non-FTS stakeholders from the membership categories described above would be convened. Participants would meet and negotiate the selection and appointment of representatives for all stakeholder categories according to the number of "seats" allocated for each membership category. | 8 (11%)                      | 10<br>(14%)                  | 4<br>(6%)                    | 50 (69%)            |

|   |        |          |          |          |
|---|--------|----------|----------|----------|
| <p>3) Same as Option 2 but a bounded—by invitation only—meeting rather than open meeting: A bounded (by invitation only) meeting or convention of non-FTS stakeholders from the membership categories described above would be convened. Attendees would include those interviewed for the situation assessment who attended the February 28th meeting and a few additional individuals identified by the stakeholders identified above. Participants would negotiate among themselves the allocation of seats and representatives for all stakeholder categories.</p>  | 4 (6%) | 7 (10%)  | 3 (4%)   | 55 (80%) |
| <p>4) Selection committee of one person per MRRIC membership category selects representatives: One representative selected by a caucus from each membership category identified above would serve on a Nomination and Selection Committee. This committee would solicit nominations for each of the membership categories. They would then meet and select members of MRRIC according to the number of representatives allocated per membership category.</p>   | 2 (3%) | 3 (4%)   | 13 (18%) | 54 (75%) |
| <p>5) All persons nominated for positions of representative make the decisions with the help of a 3rd party organization: Nominations would be sought for individuals to fill non-FTS membership category seats from organized groups of non-FTS stakeholders in the basin. Nominations would be collected by an impartial organization such as the U.S. Institute. Nominees would then be contacted to ascertain their interest in serving and requested to provide data to confirm that that they represent a group of stakeholders have its endorsement to represent them and would commit to the “Desirable Characteristics and Qualities of Future MRRIC Members” identified in the Draft Situation Assessment Report. Information provided by all candidates would be sent to all other candidates. A list of all nominees and the membership category seats for which they are seeking selection would be prepared. All nominees would either meet as a group to select their preferred candidates for each MRRIC membership category on the list or participate in a selection process in which all nominees would rank their preferences of preferred candidates for both their membership category and all others thus choosing who would represent them and the counterparts that they would most like to work with. Candidates would then be appointed to the Committee based upon the number of membership category seats allocated to their stakeholder group and the outcome of the selection process.</p> | 5 (7%) | 11 (15%) | 6 (8%)   | 50 (69%) |

|   |          |        |         |          |
|---|----------|--------|---------|----------|
| 6) Appointment by State Governors**: Each state would be allocated a specific number of non-FTS representatives to appoint. Appointments would be based on the stakeholder categories and specific interests of non-FTS stakeholders in the state. Solicitations for nominees would be made by state governments and appointments made by Governors.  | 5 (7%)   | 5 (7%) | 6 (8%)  | 55 (77%) |
| 7) Appointment by State Congressional delegation**: Each state would be allocated a defined number of non-FTS representatives to appoint. Appointments would be based on stakeholder categories and specific interests of non-FTS stakeholders in the state. Solicitations for nominees would be made by state governments and appointments made by each state's Congressional delegation.  | 1 (1%)   | 3 (4%) | 8 (11%) | 60 (83%) |
| 8) US Institute selects from nominations from stakeholders: Nominations would be solicited from all concerned stakeholder groups and nominees would provide documentation that they represent a defined group (or caucus) of stakeholders. Selection of appointments for the first meeting of MRRIC would be made by the U.S. Institute. Additional members could be added by MRRIC members after the first meeting.  | 13 (18%) | 2 (3%) | 8 (11%) | 49 (68%) |
| 9) Number of stakeholder groups based on Congressional seats**: Based on Congressional districts there would be 16 seats for non-FTS stakeholders (to be allocated using the Spring Rise plenary group categories as a guide). This would double if MRRIC membership were 60-80. The states would each have one "vote" as would the 8 primary purposes (who would be selected from those with interests larger than one state). All 28 Tribes would come to the table but would have one half of the states' "votes." | 3 (4%)   | 2 (3%) | 4 (6%)  | 63 (88%) |
| Total Respondents   | 72       |        |         |          |
| (skipped this question)   | 15       |        |         |          |

The three procedures highlighted above received the broadest level of support for combined first, second and third choices.

**Question # 4** - How often should MRRIC meet during its first year of operation? - Please note your top two preferences.

|  |                |            |
|--|----------------|------------|
| How often should MRRIC meet during its first year of operation? – Please note your top two preferences.<br>(Each preference was counted equally) |                |            |
|  | Response Total | Percentage |
| Monthly for 1 day  | 9              | 8.11%      |
| Monthly for 1.5-2 days   | 5              | 4.50%      |
| Every two months for 1 day   | 16             | 14.41%     |

|                                 |    |        |
|---------------------------------|----|--------|
| Every two months for 1.5-2 days | 9  | 8.11%  |
| Quarterly for 1 day             | 21 | 18.92% |
| Quarterly for 1.5-2 days        | 20 | 18.02% |
| Twice a year for 1 day          | 13 | 11.71% |
| Twice a year for 1.5-2 days     | 14 | 12.61% |
| Once a year for one day         | 3  | 2.70%  |
| Once a year for 1.5-2 days      | 1  | 0.90%  |
|                                 |    |        |
| Total Respondents               | 72 |        |
| Removed – No Affiliation        | 15 |        |

The top two preferences for meeting frequency were quarterly one-day meetings, and quarterly meetings from one-and-a-half to two days in length. The third most preferred meeting schedule was one day every two months.

**Question # 5 - Should the site for MRRIC meetings be fixed at one location or move around to different parts of the basin?**

|  |                |            |
|--|----------------|------------|
| Should the site for MRRIC meetings be fixed at one location or move around to different parts of the basin? Please indicate your top preference. |                |            |
|  | Response Total | Percentage |
| MRRIC meetings should be at one fixed location that is easily accessible to members from both the Upper and Lower Basins.                        | 29             | 40.28      |
| MRRIC meetings should be held at multiple locations throughout the basin.  | 43             | 29.72      |
|  |                |            |
| Total Respondents  | 72             |            |
| Removed – No Affiliation   | 13             |            |

There is a general preference for locations throughout the basin.

Your responses will inform the CDR Team as we make changes on the Draft and complete the Final Situation Assessment Report.

Once again, thank you for your participation in the polling process.

The CDR Team

## **APPENDIX 8: Statement of Federal Role in MRRIC Deliberations**

### **Update on the Intended Federal Agency Role in MRRIC (3/31/06)**

This week representatives of MRRIC Federal agencies (COE, FWS, EPA, NPS, BOR, and WAPA) conferred to discuss the potential role of Federal agencies in deliberations by the Committee and decision-making on recommendations the Committee will make to agencies involved in recovery issues. At the conclusion of discussions the agencies reached the conclusions reported below. These conclusions may be helpful to you as you draft comments on the Situation Assessment and participate in future electronic polls.

#### **MRRIC decision making:**

- ◆ The Federal agencies will participate in MRRIC to provide technical, regulatory, legal, policy, and other information as requested. However, the Federal agencies will not participate in decision-making within MRRIC on the recommendations put forward by MRRIC. The Federal agencies cannot abrogate any of their responsibilities or authorities and will be making final decisions regarding implementation of recovery actions, including those recommended by MRRIC.

#### **MRRIC research, dialogue and deliberations.** MRRIC Federal agencies may:

- ◆ Provide technical information and conduct relevant analysis of data for the Committee;
- ◆ Actively participate in MRRIC technical or scientific working groups;
- ◆ Provide sideboards regarding agency views on issues under discussion so that non-Federal, Tribal and State (non-FTS) members of MRRIC are aware of the range of acceptability within the parameters of technical/scientific issues, feasibility of implementation, financial parameters, etc.;
- ◆ Actively listen to, and participate in, stakeholder dialogue to better understand stakeholder interests and needs;
- ◆ Be involved in discussion of issues concerning recovery efforts related to agency mandates; and
- ◆ Engage in discussion and development of options for possible recommendations. The non-Federal Committee members, with Federal agency participation but not necessarily with Federal agency approval, will determine their final recommendations and will forward them to the appropriate Federal agency or agencies.

## **APPENDIX 9: Recommended Stakeholder Agencies and organizations that should be contacted for Appointments and Nominations for Participation in MRRIC**

### **FEDERAL AGENCIES**

- ◆ US Army Corps of Engineers
- ◆ US Bureau of Reclamation
- ◆ US Environmental Protection Agency
- ◆ US Fish & Wildlife Service
- ◆ Western Area Power Administration
- ◆ National Park Service

### **TRIBES/INTER-TRIBAL ORGANIZATIONS**

- ◆ Assiniboine & Sioux Tribes of Fort Peck
- ◆ Blackfeet Nation
- ◆ Cheyenne River Sioux Tribe
- ◆ Chippewa Cree Tribe of the Rocky Boy's Reservation
- ◆ Crow Tribe
- ◆ Crow Creek Sioux Tribe
- ◆ Eastern Shoshone Tribe
- ◆ Flandreau Santee Sioux Tribe
- ◆ Fort Belknap Assiniboine & Gros Ventre Tribes
- ◆ Iowa Tribe of Kansas and Nebraska
- ◆ Kickapoo Tribe in Kansas
- ◆ Lower Brule Sioux Tribe
- ◆ Northern Arapaho Tribe
- ◆ Northern Cheyenne Tribe
- ◆ Oglala Sioux Tribe
- ◆ Omaha Tribe of Nebraska and Iowa
- ◆ Ponca Tribe of Nebraska
- ◆ Prairie Band Potawatomi Nation
- ◆ Rosebud Sioux Tribe
- ◆ Sac & Fox Nation of Missouri in KS and NE
- ◆ Santee Sioux Nation
- ◆ Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
- ◆ Spirit Lake Nation
- ◆ Standing Rock Sioux Tribe
- ◆ Three Affiliated Tribe of Fort Berthold
- ◆ Turtle Mountain Band of Chippewa Indians
- ◆ Winnebago Tribe of Nebraska
- ◆ Yankton Sioux Tribe
- ◆ Mni Sose Intertribal Water Rights Coalition

## **STATES**

- ◆ State of Iowa
- ◆ State of Kansas
- ◆ State of Missouri
- ◆ State of Montana
- ◆ State of Nebraska
- ◆ State of North Dakota
- ◆ State of South Dakota
- ◆ State of Wyoming

## **NON-GOVERNMENTAL, PRIVATE ORGANIZATIONS**

- ◆ Agriservices of Brunswick
- ◆ American Rivers
- ◆ Big Soo Terminal
- ◆ Central Montana Electric Power Cooperative
- ◆ City of Omaha Department of Parks & Recreation
- ◆ Coalition to Protect the Missouri River
- ◆ Conservation Federation of Missouri
- ◆ Garrison Diversion Conservancy District
- ◆ Interstate Marine Terminal, Inc.
- ◆ Kansas City Board of Public Utilities
- ◆ Midcontinent, American Waterways
- ◆ Mid-West Electric Consumers Association
- ◆ Missouri Levee & Drainage District Association
- ◆ Missouri River Bank Stabilization
- ◆ Missouri River Technical Group
- ◆ MO-ARK
- ◆ ND Sportfishing Congress
- ◆ Nebraska Public Power District
- ◆ Passenger Vessel Association
- ◆ Schutte Lumber Company
- ◆ Sierra Club
- ◆ Sioux Land Inter State Metro Planning Council (SIMPCO)
- ◆ The Nature Conservancy
- ◆ Upper Basin Bank Stabilization

## **APPENDIX 10: Summary of Recommendations by the CDR Team**

*CDR Team Recommendations regarding:*

### ***Focus and Mandate of MRRIC***

The Team recommends that the involved Federal agencies and other members of MRRIC utilize the information gained through interviews, polls and research on other recovery initiatives and parameters to draft a potential focus/goal/mandate statement. One possible process is to use the language in the box above as a “single-text negotiating document” and to change or modify it until members of the Committee can agree on a common statement.

The final answer to “what will be the focus and mandate of MRRIC” must arise from the convening agencies and from members of the Committee themselves, both individually and collectively. The ideas and input above should be seen as a temporary starting point until MRRIC can deliberate and draw its own conclusions about its focus. The MRRIC’s description of its focus and mandate will become the centerpiece of the Charter – a document to which that all members of the Committee must commit themselves.

### ***Accountability and Reporting Relationships of MRRIC***

The CDR Team concurs with recommendations of the vast majority of interviewees and suggests that MRRIC should report to both the COE and the USFWS, as co-partners in recovery efforts, and make recommendations to them jointly. These two agencies must agree on overall recovery efforts for any actions to take place. They must also agree on the adequacy of actions to achieve mutually agreed-upon agency standards. Clearly the COE will have to be the lead agency concerning implementation of recovery efforts.

While the two agencies identified above will have primary responsibility for final decision making and implementation on recovery activities on the mainstem, other Federal agencies have legal mandates and authorities to make decisions in other areas – such as the EPA on water quality issues, the Bureau of Reclamation on water management on tributaries, the National Park Service on stretches of the Missouri designated as Wild and Scenic Rivers and, the Western Area Power Administration on power related issues.

The CDR Team sees that the COE and USFWS have at least two options to formalize their working relationship: First, that the two agencies could sign a joint Memorandum of Agreement (MOA). Second, they might craft a MOA that incorporates and defines the roles and responsibilities of all Federal agencies working on recovery efforts in the Basin.

Under either option, the MOA would describe: 1) the mandate, authority and commitments each agency will make concerning recovery efforts in the Basin; 2) how collective Federal decisions will be made; and 3) financial arrangements that are appropriate or necessary for them to accomplish their joint goals. The long-term

effectiveness of MRRIC will be seriously compromised if members of the Federal family cannot collaborate, reach mutually acceptable agreements and carry out designated roles and responsibilities related to recovery implementation.

### ***Authority of MRRIC***

The consensus of interviewees that MRRIC have only advisory and not binding decision making authority over agency policies, projects or implementation measures, should be formally recognized by concerned governmental agencies and all concerned parties involved in the Committee. This proviso should be included in any future charter, protocol, bylaws or meeting guidelines of MRRIC.

Parties have suggested that concerned Federal agencies should make a good faith commitment at the first meeting of MRRIC, both verbally and in writing, to fully consider implementing the recommendations made by the Committee, providing they fall within their agency mandates, adequately address a component of recovery of the three endangered species, comply with relevant laws and regulations, and are financially and technically feasible. It will be important for the Committee and concerned agencies to discuss whether the agencies will report back to the group if they do not follow recommendations of MRRIC.

### ***Size of MRRIC Plenary Committee***

The CDR Team believes that a large Plenary Committee with either a bounded (a limited number of designated members) or an unbounded (any and all interested stakeholders could choose to participate) membership of more than 80 participants, while allowing for the inclusion and participation of a large number of governments and stakeholders in the Basin, will be unwieldy. A group of this size will find it hard to maintain continuity of membership, have focused and in-depth discussions, and it will be difficult if not impossible to make collective decisions that will be supported by a large number of participants. However, the Team does believe that every effort should be made to include public involvement opportunities as part of MRRIC deliberation process, to allow for large-scale participation and input into the process.

Conversely, the CDR Team suggests that a very small MRRIC of fewer than 25 to 35 members will probably be politically and organizationally unacceptable to stakeholders in the Basin. A Committee of this size would not provide adequate representation of the diversity of views and groups in the region. We also believe that based on what many interviewees' tell us of their experience in the Spring Rise Plenary Group, they support and can live with a Plenary of this size and believe that it will be able to function and make decisions.

The CDR Team believes that the membership in MRRIC should probably be similar in size to the Spring Rise Plenary Group, or modestly larger, to accommodate representatives of the diverse interests in the Basin. If members are clearly defined, consistently attend meetings, build positive working relationships, keep up to speed on issues being discussed, can agree on mutually acceptable decision making procedures and adhere to meeting protocols (see below), the CDR Team thinks that a group of up to 75,

but ideally slightly smaller might be workable, and would be able to make collective decisions on at least some issues.

If concerned Federal agencies or some form of convening committee for MRRIC decide to have a much larger committee, the Team makes the following suggestions:

- ◆ A larger MRRIC should be used to generate input, but should not necessarily be asked to make collective decisions on all issues;
- ◆ MRRIC could consider breaking issues to be addressed into four categories: 1) whole Basin issues; 2) regional issues (Upper/Lower Basin); 3) state and Tribal issues; and 4) reach issues. MRRIC Plenary could determine which issues should be addressed by the Committee as a whole – such as general policy issues, targeting and prioritizing projects, allocation of funds to specific projects, etc. – and delegate authority to develop recommendations, with parameters, to smaller groups based on region, states, Tribes, reach of the river or technical issues. (The latter should include a representative cross-section of Plenary Group members as well as substantive experts.) The Plenary might only have to review recommendations from subgroups to assure that they had been made within agreed-upon parameters.

If the concerned Federal agencies or some type of a convening committee of MRRIC decide to have a much smaller committee of fewer than 35 members, we would recommend that:

- ◆ The process includes a robust public input and involvement component that will actively solicit input from the broader public, as well as including a strong outreach and education function to inform the public about the deliberations and conclusions of MRRIC;
- ◆ A broad range of stakeholders should be actively involved in technical committees, which should play a strong role in developing proposals for recommendation to the Plenary Committee and ultimately to Federal agencies;
- ◆ The small MRRIC Plenary should consider breaking issues to be addressed by the committee into the same four categories identified for the large group above. The committee should then determine which issues must be addressed by the Committee as a whole, and which could be delegated with parameters to smaller groups based on similar criteria as described above. As in the previous process, the Plenary might only have to review recommendations from subgroups to assure that they had been made within agreed-upon parameters.

### ***Executive Committee and Chairpersons***

The decision as to whether MRRIC should have an executive committee, an executive secretary and/or secretariat, or a chair, and what roles they might play, should rest with MRRIC, to be determined once the Committee is underway.

### ***Facilitation***

The Plenary Committee of MRRIC should be professionally facilitated, at least at the beginning of the process. At some time in the future, the Committee may decide that it

can be self facilitating, but at this time many interviewees perceived that it would be difficult to find potential members of MRRIC who would have the trust of the group and requisite skills to provide process assistance.

CDR also recommends that in the future, consideration be given to securing services of local facilitators to facilitate technical committees, other working groups or reach – based initiatives. Involvement of local facilitators may help lower costs, build local capacities and promote a sustainable Committee process.

Prior to convening MRRIC, it will be important for the Federal agencies and representatives of all other potentially involved parties, to meet and decide how facilitation should and will be conducted for MRRIC in the future. They should define common expectations, tasks the facilitators should perform, and determine who or what entity should facilitate the future process. This discussion should include an assessment of the facilitation services provided to date by the US Institute and the CDR Associates Team.

If past history is a guide, convening and facilitating MRRIC in the next few months and in future years will not be easy, either for the parties or any facilitator(s) providing assistance for the initiative. Multiple competing groups; significant politicization and polarization over a number of major issues; significant disagreements over membership process and decision making; political maneuvering by potential parties or MRRIC members in Washington and with senior elected and appointed leaders; and low levels of trust among potential participants are substantive, procedural, structural and relationship problems that will be faced by any mediator or facilitator whose services are secured to assist in the process.

For the facilitation process to be effective and have any likelihood of success there must be significant overt support by the convening Federal agencies and other involved governments and non-FTS stakeholders for both the facilitation process and any facilitator(s) who are selected to provide third-party services. Overt support means public and verbal acceptance, support for and defense of the process, and confirmation of the facilitators by a critical mass of concerned parties, and a commitment to actively work directly with the facilitators in a collaborative and cooperative manner. Recommendations should be given in a constructive manner and disagreements handled respectfully.

Part of the future MRRIC structure should be a mechanism and procedure to directly raise and handle any concerns Committee members have about the performance of the facilitators, and to address and resolve them in a timely and amicable manner.

### ***Public involvement and input process***

CDR concurs with all of the above recommendations. Having a strong and effective public involvement component of MRRIC process will be a significant step toward meeting the needs and interests of stakeholders who advocated open membership for the

Committee, as well as providing forums for input, questions and answers and effective means to disseminate information on the work of the Committee.

### ***Categories of Membership in MRRIC***

Establishing membership categories for MRRIC and especially for potential non-FTS stakeholders will be critical for the convening of the Committee. Without some categories that identify interests to be included on the Committee and provide some standards and criteria for identification, nomination, selection and appointment, it will be difficult for the convening to move forward.

The CDR Team concurs with the majority view of interviewees regarding the desirability of broad participation in MRRIC. The Committee should have members from non-FTS stakeholder groups, and from Federal, Tribal, state and municipal governments. We believe that the precedent of an inclusive process in the Spring Rise Facilitation has been established and the majority opinion of interviewees in this situation assessment will not allow for anything less. Limiting participation exclusively to non-governmental stakeholders would be politically unacceptable for a number of key stakeholders in this process.

Based on the numerical results of the first and second poll, and comments received regarding proposed categories, the CDR Team proposes to accept all categories in the poll which received over 80% acceptance level and to make a number of revisions within each category as suggested by poll participants. (See Appendix 7 for complete data.) These revisions are based on authorized uses of the river, other Federal laws that are applicable to river management, and interests identified by stakeholders. We recommend the following categories for non-FTS stakeholders:

**Flood Control** (Flow related issues related to flood control, interior drainage, bank stabilization and sedimentation as represented by interest groups or organizations with the above areas of focus and governments and governmental agencies mandated to address these issues)

**Irrigation** (Water for agriculture and ranching as represented by riparian landowners, irrigators, irrigation districts or organizations representing agricultural interests and governments or governmental agencies mandated to address these issues)

**Hydropower** (Hydropower as represented by either or both public and private power interests and governments or governmental agencies mandated to address these issues)

**Water Supply and Quality** (Municipal, industrial (including water for cooling power plants), rural water supply and waste water discharges as represented by municipalities and other organizations with water supply and quality as a major focus and governments and governmental agencies mandated to address these issues)

**Navigation and Terminals** (Navigation, terminal and other socio-economic interests related to shipping on the river as represented by organizations with this focus and governments and governmental agencies mandated to address these issues)

**Fish and Wildlife and Endangered Species** (Non-endangered and endangered species as represented by non-governmental conservation and environmental interest groups or organizations and governments or governmental agencies mandated to address these issues)

**Recreation** (Recreation and river-based tourism interests including but not limited to anglers, hunters, hotel/motel/lodge owners, trailer/tent camps, tourism representatives, etc. as represented by interest groups or organizations with this focus and governments and governmental agencies mandated to address these issues)

**Socio Economic Development** (Broader economic development issues in the Basin as not already represented and advocated by membership categories above, as represented by *regional organizations* such as Chambers of Commerce, regional councils of governments, Conservation Districts/Natural Resource Districts or other groups as decided by MRRIC)

**And Perhaps:**

**Historic Properties, Cultural Resources and Burial Sites** (Non-Tribal and Tribal focus as represented by non-governmental interest groups or organizations with this focus and governments and governmental agencies mandated to address these issues.) Note: Tribal interests in this area may be represented by Tribal members of MRRIC, including the Tribal Historic Preservation Officers; state interests may be represented by state representatives and/or State Historic Preservation Officers or other state representatives.

**At-Large** (To be decided by MRRIC after it has begun meeting, perhaps including groups or individuals who represent bridging interests or views in the Basin)

***Representation and balance on MRRIC***

If MRRIC is to adequately represent the range of interests in the Basin and have some balance of views when deliberating and making recommendations, there must be a decision regarding the number and allocation of seats for prospective membership categories and their representatives, as well as a baseline for the projected total number of members.

Based on input from the majority of interviewees for MRRIC regarding the preferred size, the CDR Team has established an initial number for overall membership of between 50 and 75 members.

We also believe that Federal, Tribal and state representatives must be on the Committee, and that Federal agencies must be clear about their role in deliberations and decision making on recommendations.

Within the 50-75 number of membership slots, CDR recommends that 30 seats be allocated to non-FTS membership categories. This will make non-FTS stakeholders the largest single group on MRRIC.

CDR polled non-FTS stakeholders separately regarding their preferred allocation of seats within the 30 non-FTS category and has carefully examined the results of interviews and the polls. We also looked at the recommendations of the ad-hoc stakeholder working group regarding on this issue.

Different levels of participation and input by non-FTS stakeholders in the polls and an average of their responses do not result in fair or balanced numbers for allocations of seats. Preferences of individual stakeholder groups regarding their recommended number of seats for their own group results in a total number of seats much greater than 30.

Therefore, the CDR Team recommends the following *preliminary* allocation of seats for MRRIC, to convene its first meeting. At this meeting, participants can determine if the existing categories and numbers of seats per category are acceptable, or if they should be adjusted to revise the composition of the Committee. (The Committee may also decide to try out this proposed allocation for a number of months or meetings, prior to review or adjustment.)

For non-FTS representation, the CDR Team recommends the following allocation and balance of seats and timing for appointment, as a starting point when MRRIC meets initially:

#### ***Qualifications of MRRIC Members***

The CDR Team agrees with the “Desirable Characteristics and Qualities” identified by interviewees (above). Although it is critical that all those involved with the Recovery Committee process feel comfortable debating issues and disagreeing with their colleagues they must also be firmly committed to the process and not undermine it at Plenary, technical or work group meetings or “away from the table.” This would include inflammatory “spam” email.

#### ***Level of authority of MRRIC and its membership***

The Team concurs with and supports the recommendations of the majority of interviewees regarding levels of authority and expertise needed by members of the Recovery Implementation Committee and technical committees – that they include senior leadership from Federal, Tribal, and state governments, and executive director level leaders from non-Federal, Tribal and State stakeholder organizations.

### ***Selection of MRRIC members***

The CDR Team believes that the major processes for selecting members of MRRIC have been identified. They have been considered and evaluated by potential non-FTS stakeholders and their preferences have been indicated.

The most acceptable method for selection of non-FTS stakeholder representatives on MRRIC is by interest group caucuses. The CDR Team accepts this input and concurs with the conclusion. However, the team has recommendations regarding how this selection process should be implemented.

- 1) Existing members of a caucus should adequately inform all other potential caucus members about the proposed procedure and timeline for selection decisions, so that they have adequate time to participate and respond.
- 2) Nominations should be solicited broadly within the potential pool of stakeholders who might represent the specific membership category.
- 3) Nominations should be sought for representatives of sub-interests within a stakeholder category, if appropriate.
- 4) Nominations should be sought for individuals who are leaders and who have the strong support of their organizations or interest groups. Nominees should have a clear group of constituents whom they represent, and should not represent themselves alone.
- 5) Nominees should be sought who will subscribe to the *Desirable Characteristics and Qualities of Future MRRIC Members* identified earlier in this report.
- 6) Selection and approval of nominees should follow a fair and democratic process, either by a vote or consensus, and should not be decided by a small group or clique.
- 7) Each caucus should develop a fair internal dispute resolution process if either the selection process or its outcome is contested.
- 8) Commitment to the agreed upon MRRIC protocols or ground rules should be enforced.

### ***Involvement of Federal agencies***

It is clear that robust and continuing involvement, commitment and engagement of high level Federal officials is critical to the MRRIC process. Federal agencies need to make a timely decision regarding their roles and levels of involvement in MRRIC deliberations and decision making on recommendations. It may also be useful for MRBIR to play a role in bringing Federal input to the MRRIC process.

After this recommendation was made in the Draft Situation Assessment report, Federal agencies (COE, USFWS, USEPA, NPS, BOR and WAPA) had several internal agency discussions, reviewed Tribal, state and non-FTS stakeholder input, and tentatively decided that:

*The Federal agencies will participate in MRRIC to provide technical, regulatory, legal, policy, and other information as requested. However, the Federal agencies will not participate in decision-making within MRRIC on the recommendations put forward by*

*MRRIC. The Federal agencies cannot abrogate any of their responsibilities or authorities and will be making final decisions regarding implementation of recovery actions, including those recommended by MRRIC.*

(See Appendix 8 for complete statement of Federal Role in MRRIC deliberations and decision making.)

### ***Intergovernmental and Interagency Coordination***

***MoRAST and MRRIC*** – To address the concern about relationships among MoRAST, non-member states and MRRIC, it will be important to build on conversations already initiated between MoRAST (with the State of Missouri as an observer) and Federal agencies involved in the formation of MRRIC, regarding organizational roles and responsibilities. Ultimately these discussions need to be taken over by MRRIC. It is critical that these discussions be open and transparent, with MRRIC's participation once it is formed.

***Interagency Cooperation*** – The CDR team strongly recommends that involved Federal agencies develop a MOA regarding interagency working relationships in MRRIC process. In that context, the agencies may want to secure the services of an internal facilitator to help them develop the document. The U.S. Institute has provided these services in the past to agencies undertaking similar initiatives. In addition to the development of MOA's between or among Federal agencies, the Team suggests consistent, close coordination among agencies, perhaps through the regular forum of the Missouri River Basin Interagency Roundtable (MRBIR).

The CDR Team also strongly encourages the development of a Washington based Principles group composed of senior agency leaders to provide and develop support for MRRIC and its work in D.C.

***Tribal Coordination*** – Because of the large number of Tribes involved in the MRRIC's deliberations and decision making, the Team recommends that funding be made available to enable them to secure administrative and logistical support.

### ***Science and Data***

One of the first orders of business of MRRIC should be the appointment of a Technical Committee or Working Group to develop recommendations for the Plenary on how issues related to data and science should be addressed. Agreement on at least some of these data issues will have to be reached, especially if particularly contentious recovery issues are to be addressed successfully.

In addition to suggestions made by interviewees concerning how to address data issues, the science and data committee might also consider the use of collaborative modeling to obtain broadly acceptable information on issues such as hydrology and social impacts, and use of GIS-based decision support systems to organize data that have been collected.

### ***Building of trust in this process***

CDR endorses the trust-building recommendations above. MRRIC should take adequate time to build a charter and protocols (see below), including guidelines for participation, to help members build greater trust in the process and in one another. Members should also insist on consistent feedback mechanisms to assess whether the levels of trust that they are hoping to build are actually occurring.

### ***Protocols***

Detailed examination of prospective protocols and ground rules will be essential to the functioning of MRRIC. Use of Spring Rise protocols and recommended additions should be discussed at initial MRRIC meetings and, if appropriate, incorporated into its charter.

### ***Schedule***

It is clear that MRRIC must be free from the burdensome time constraints of the Spring Rise process. Further, meetings for the first year of the process will probably need to be more frequent than in subsequent years. However, beyond that, MRRIC must make its own decisions regarding time and schedule.

### ***FACA issues***

A decision regarding whether MRRIC should be convened under FACA or exempted under Section 4 of the ESA for Recovery Committees needs to be made as soon as possible. This decision will have a significant impact on scope and mandate issues, membership categories and procedures, membership selection and appointment, and the timing for convening the first meeting.

### ***Situation Assessment follow-up and convening***

Federal agencies will ultimately take a significant role in convening MRRIC. Individually or collectively, they will have to make at least some of the initial decisions regarding structural, operational and relational issues to bring the Committee into existence and launch its work. Once MRRIC is convened, its members will begin to take a stronger role in decision making and determining its direction.

To facilitate agency decision making on follow-up to the Situation Assessment Report, the CDR Team has prepared the following list of decisions, identified who should make them, and provided an assessment of their priority.