

PROPOSED DRAFT

OPERATING PROTOCOL AND GROUNDRULES FOR THE FACILITATION OF AN INTERGOVERNMENTAL AND STAKEHOLDER PROCESS TO DEVELOP AGREEMENT ON A “SPRING RISE” PROPOSAL

May 12, 2005

INTRODUCTION

This document describes the goals of the Spring Rise process, our operating structure, and how we will communicate and make decisions. When amended and accepted by the Plenary Group, it will guide and direct our collaborative efforts. These protocols and groundrules explain how the Plenary Group of key stakeholders, with the support of other working groups and agencies, will provide the U.S. Army Corps of Engineers (USACE) with a recommendation for the criteria to be used to plan and manage the Missouri River Spring Rise. This process, and the stakeholders participating, will complete a Spring Rise recommendation by August 2005.

This document contains the following Sections that describe our work together on the Spring Rise process:

Section 1 – Background

Section 2 – Structure, composition and tasks of key groups working on the Spring Rise

Section 3 – How we will undertake our responsibilities and relate to others

Section 4 – How we will make decisions, using consensus

Section 5 – How we will communicate with each other in the plenary, technical working group and steering committee.

Section 6 – How we will communicate with the persons and institutions not directly in the process

SECTION 1 - BACKGROUND

The federal agency with overall responsibility for management of the Missouri River is the USACE. The USACE's mandate for the Missouri River requires it to find a balance among competing needs and uses of concerned political entities and stakeholders. Integrated

management requires efforts to prevent floods, enable navigation and shipping on the River, meet obligations to Tribes, sustain hydropower generation, preserve water supply for multiple uses, protect water quality, facilitate recreation, and protect wildlife and their habitat, especially endangered species.

Procedures that outline the USACE's approach for the management of the river are detailed in its Missouri River Master Water Control Manual (Master Manual) of 2004. Another important document that influences how the river is managed is the 2002 U.S. Fish and Wildlife Service's (USFWS) Biological Opinion (BioOp) and its 2003 Amendment (2003 BioOp). The 2003 BioOp requires that, when feasible, a "Spring Rise" be provided for specific reaches of the Missouri in order to avoid destruction or adverse modification of critical habitat on the river and the resulting jeopardy to the Pallid Sturgeon, an endangered species. Although a "Spring Rise" is not planned for 2005, the USACE has committed to working with concerned political entities and other stakeholders to develop criteria for the Spring Rise to be in the 2005-2006 Annual Operating Plan for the Mainstem Reservoir System.

According to the USFWS, flora and fauna living in or along a river are often highly dependent on certain patterns of streamflow to assure their sustainability. Significant changes in flows can, in some circumstances, jeopardize the survival of species that are more sensitive to those changes.

The USFWS has determined that past management and regulation of the Missouri River, as well as changing hydrological patterns, have significantly adversely impacted three endangered species, in particular the Pallid Sturgeon. In order to mitigate and correct these impacts, new flow patterns are needed. A "Spring Rise" is a significant increase in flows in the early part of a water year that are generally designed to accomplish specific goals, some of which include shifting sedimentation to create new channels, pools, sandbars, and islands, which provide habitat for the Pallid Sturgeon; providing and transporting nutrients; and eliminating problematic plant life on river banks. Although the 2003 BioOp requires a "Spring Rise," there are a variety of issues that will need to be discussed and decided upon before it can be implemented.

The USACE is exploring ways to encourage and support more collaborative approaches to manage some of the water management challenges in the Missouri Basin. To this end, the USACE has committed to developing a facilitated intergovernmental process, which will involve multiple stakeholders, to develop agreement on a "Spring Rise" recommendation. This recommendation, which the USACE hopes will be a consensus-based document, will be presented to the agency for consideration, approval, and implementation.

The USACE has undertaken this effort with the assistance of the U.S. Institute for Environmental Conflict Resolution (ECR). ECR assisted the parties with planning the process, and finding and selecting the CDR facilitation team. This team is entirely independent and responds directly to ECR.

SECTION 2 - STRUCTURE, COMPOSITION AND TASKS OF KEY GROUPS WORKING ON THE SPRING RISE

The Core Planning Group – This group was established by the ECR and CDR Associates to plan the first Plenary Group meeting of the Spring Rise initiative. The Core Planning Group was composed of representatives of the USACE, USFWS, USEPA, NPS other funding agencies and organizations, and other key partnering agencies, organizations or governments. The role and functions of the Core Planning Group were to assist the CDR Team to quickly develop an appropriate design and strategy for an inclusive “spring rise” process and prepare for the first Plenary Group meeting. The CDR Team facilitated an initial and primary meeting of the Core Planning Group in Kansas City on May 9-10, 2005. The Core Planning Group will dissolve as soon as an ongoing Coordinating Committee for the Spring Rise Proposal is designated by members of the Plenary Group (see below.)

Plenary Group on the Spring Rise Proposal – This group - composed of designated representatives and their alternates of concerned agencies, organizations and stakeholders - will be responsible for:

- 1) Defining the overall direction and process for the development of a spring rise proposal,
- 2) Determining the mandates and scopes of work for the Technical Working Group(s);
- 3) Reviewing proposals and recommendations developed by the Technical Working Group(s); and
- 4) Making final decisions on recommendations for a Spring Rise to be submitted to the U.S. Army Corps of Engineers and other involved Federal agencies.

Once Plenary Group membership is established, no new members will be admitted. The Plenary Group will make its decisions on recommendations to the USACE by consensus.

Coordinating Committee for the Spring Rise Proposal – This committee will take over the coordination functions of the Spring Rise initiative from the Core Planning Group at the conclusion of the first Plenary Group meeting, and will serve as an executive committee for the Plenary Group. It will be composed of a representative cross-section of members appointed by the Plenary Group for the Spring Rise Proposal. The committee will have procedural coordination responsibilities between plenary sessions, oversight of the Technical Working Group(s) activities and will serve as a liaison between the Plenary Group, Institute staff and the CDR Team. This committee has coordination responsibility only. Therefore, it will make only procedural decisions, and not decisions regarding the Plenary Group recommendation to the USACR. The committee will operate by consensus.

Technical Working Groups – The Plenary Group may establish Technical Working Groups to assist it in its deliberations. Technical Working Groups will have primary responsibility for developing technical data and proposals regarding the Spring Rise, which will be presented to the Plenary Group for its consideration, approval or both.

Technical Working Groups will be composed of technical experts with knowledge and expertise of hydrological, ecological, endangered species and water management issues. The Groups may also include political decision makers.

Members of the Technical Working Groups will be nominated and approved by members of the Plenary Group. Technical Working Groups will receive their mandate from the Plenary Group, and will be responsible for addressing technical issues and bringing proposals back to the Plenary Group for its consideration and/or approval.

They will attempt, to the greatest extent possible, to bring consensus-based recommendations back to the Plenary Group. The Technical Working Groups does not have final decision making authority on any issue.

Meetings of these Groups will be open to the public.

Public Meetings – Public meetings are forums where members of agencies, organizations, groups and members of the public who are not formal representatives participating in the Plenary Group or Technical Working Group will have opportunities to provide input, ask questions and receive answers from the members of these bodies. In addition, there will be time allocated for public input at each of the Plenary and Technical Work Group meetings, and after the completion of the draft proposal before it is referred to the USACE and other agency decision makers or implementers.

The U.S. Institute for Environmental Conflict Resolution - The Institute is the overall project manager for the initiative. It will supervise all activities of the consultant.

The U.S. Army Corps of Engineers (USACE) – This agency is mandated to make final decisions on the Spring Rise and the operation of the Missouri River.

The U.S. Fish and Wildlife Service – This agency is mandated to assure protection and recovery of endangered species, and will coordinate with the USACE regarding the acceptability of the Spring Rise proposal as a means of achieving its mandate.

SECTION 3 –HOW WE WILL UNDERTAKE OUR RESPONSIBILITIES AND RELATE TO OTHERS

Roles and responsibilities of individual members of the Plenary Group, Technical Working Groups, Coordinating Committee, and the Facilitators

Individual Members – Members of the Plenary Group and Technical Working Group(s) are expected to:

- 1) Regularly prepare for and attend work sessions;
- 2) Keep the other members, including alternates, of his or her agency, organization or group informed of what is being discussed by the Plenary Group and/or Technical Working Groups and solicit their input on these issues;

- 3) Clearly articulate and represent the interests of his/her group;
- 4) Listen to other points of view and try to understand the interests of others;
- 5) Openly discuss issues with people who hold diverse views and participate in a cooperative problem solving procedure to resolve differences;
- 6) Generate and evaluate options to address the needs expressed by the task force And
- 7) Agree to support and abide by the points described in this Operating Protocol.

Facilitators - Facilitators from the CDR Associates Team serve as independent process designers and facilitators of meetings, at the pleasure of the collective membership of the Plenary Group. The Facilitators are contractors of the U.S. Institute of Environmental Conflict Resolution, and are not contractors of or beholden to any government agency or organization involved in the substantive discussions related to the development of a Spring Rise proposal.

The Facilitators are responsible to the whole group and not to any one member or interest group. The Facilitators will remain impartial toward the substance of the issues under discussion.

In collaboration with members of the Core Planning Group, the Facilitators will design work session agendas for the first Plenary Group meeting. Subsequently, the CDR Team - Moore and McMahon, Price or Golten will design and facilitate all Plenary Group meetings, and as many Technical Working Groups meetings as possible, in consultation with the Plenary Group's Coordinating Committee.

The Facilitators will enforce ground rules that are accepted by the group. In addition, the Facilitators will ensure that important information is available to Plenary Group and Technical Working Group members in advance of each meeting.

Representation of interest group views. To enhance creativity during meetings, designated members of the Plenary Group and their alternates who represent agencies and stakeholder groups are not expected to restrict themselves to prior positions held by their organization or their group. The goals of the Plenary Group and Technical Working Group(s) are to have frank and open discussions of the issues in question and options to address these issues. Therefore, ideas raised in the process of the dialogue, prior to final recommendations by the whole group, are for discussion purposes only and should not be construed to reflect the final position of a Plenary or Technical Working Group member or his or her constituent group.

Disclosure of information – use of information in court. A goal of the Spring Rise discussion is to have as transparent and candid discussions of relevant issues as possible. This process also requires that the participants speak as openly and creatively as possible. Nonetheless, the process is being conducted in the context of past, pending and threatened litigation or administrative proceedings.

To encourage free and open discussion by representatives of institutions that have or may be involved in legal proceedings, all communications and documents under this process are accepted by all participating persons or institutions to be part of compromise and settlement negotiations.. Therefore, members of the Plenary Group and Technical Working Groups agree not to use information revealed during the Spring Rise dialogue/negotiation process in any pending or subsequent legal proceedings for any purpose. Any institution participating may mark such documents to identify the documents as being prepared for use in the process. This limitation on use does not prevent the use in legal proceedings of information that is otherwise discoverable or admissible.

Adversarial or legal proceedings. Members of the Plenary Group, as a matter of courtesy, agree to notify the Facilitators and all other Plenary Group members before initiating any adversarial or legal proceedings that may involve other Plenary Group members or which could adversely affect deliberations of the group on Spring Rise issues. Notification should provide all parties adequate time to consider options, and take appropriate measures to minimize potential adverse impacts on the work of the Plenary Group.

Schedule. The Plenary Group shall complete its work within the time allocated to develop a proposal for a “Spring Rise.” The Plenary Group and the Technical Working Group shall meet at least twice to develop, consider and reach agreements on proposals. Additional meetings may be scheduled as needed.

The Plenary Group and Technical Working Group will meet on mutually agreeable dates that will be identified at the first Plenary Group meeting.

Technical support. Plenary Group members may bring staff from their organizations or agencies or members of their constituency groups to support the problem solving process. Plenary and Technical Working Group members can defer to those individuals when their expertise is required or when requested by the Plenary Group as a whole. However, the use of support persons must not disrupt deliberations.

Attendance. Participation in and effective consensus decision making requires consistent attendance by Plenary and Technical Working Group members. Plenary and Technical Working Group members commit to attend as many meetings as possible.

In the event that a Plenary or Technical Working Group member cannot attend a meeting, he or she should delegate an alternate to attend in his or her stead. Alternates should regularly attend meetings as observers and/or be briefed by the designated Plenary or Technical Group member so that they are up to speed on all issues to be discussed at the meeting. Other Plenary Group members will not be obligated to use time dedicated for problem solving sessions to backtrack and accommodate those who have not attended the prior meeting(s). Decisions made at prior session will not be reopened to accommodate concerns of members who were absent from these meetings unless agreed upon by the Plenary or Technical Working Groups as a whole.

SECTION 4 – HOW WE WILL MAKE DECISIONS USING CONSENSUS

The Plenary Group and Technical Working Group(s) will use a consensus decision making process. 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 a package agreement that satisfies these 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 the 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.

In the event that a consensus is not reached on a given issue, a party has several options:

- 1) A party who is not in agreement with the general opinion in the group may "stand aside" and not block the consensus. This may be done through silent approval, i.e., by letting a proposal stand without spoken support or approval; or by verbally noting that the individual is not in agreement with the rest of the group members, but will stand aside and allow the group to reach a decision or take an action.
- 2) A party may stand aside, allow the rest of the group to reach a consensus and request that a minority report detailing the other view or views be added to the final agreement document.
- 3) A party may block consensus and request that the group announce that there was not an agreement on a particular question or issue. The individual blocking consensus, another group member or the group as a whole can request that the final report of the meeting contain a detailed explanation of the basis for the disagreement, a list of the interests which needed to be satisfied and a description of some of the alternative settlement options which were explored but not agreed upon. It is also possible to present one or more options which have been developed through an interest-based process and which have attempted to meet all parties' interests but which fall short of being a consensus because of a matter of principle or failure to meet one or more parties' critical needs.

SECTION 5 – HOW WE WILL COMMUNICATE WITH EACH OTHER IN THE PLENARY, TECHNICAL WORKING GROUPS AND COORDINATING COMMITTEE.

The following guidelines have been adopted to encourage productive deliberations and decision making. Members of the Plenary, Coordinating Committee and Technical Working Groups will commit to “best efforts” at following them and give the Facilitators the authority to enforce them.

It is crucial that everyone have a chance to be heard and to hear others. Therefore, Plenary and Technical Working Group members will:

- Attend to what is being discussed in the meeting and avoid side conversations
- Allow people to speak and refrain from interrupting
- Be brief and speak to the point

It is important to find creative, innovative solutions. Therefore, Plenary and Technical Working Group Members will:

- Avoid judging ideas prematurely
- Look for the need or interest that gives rise to the idea
- Look for ways to improve proposals
- Try to remain open minded

Some disagreements are inevitable, but they should be focused on the issues involved rather than on the people holding a particular view. Therefore, Plenary and Technical Working Group Members will:

- Promote cooperative interactions and avoid competitive behaviors that denigrate other participants
- Promote positive behaviors that promote productive discussions and agreement and avoid behavior that is disruptive to the work of the group
- Address one another in respectful ways

SECTION 6 – HOW WE WILL COMMUNICATE WITH THE PERSONS AND INSTITUTIONS NOT DIRECTLY IN THE PROCESS

Work session notes and other working documents will be available to the public upon request. Information, including meeting notes, will also be posted on a web site managed by the U.S. Institute for Environmental Conflict Resolution.

Constituents. Informed constituencies will enhance the prospects for approval of the recommendations of the Plenary Group. Members of the Plenary Group who represent agencies or constituencies will inform their constituents and solicit their opinions about the issues under discussion. They will represent the interests of their constituent group and bring their constituents' concerns and ideas to the deliberations. Members of the Plenary Group may elect to hold regular meetings with their constituent group (a formal caucus), to provide copies of work session notes to their constituents and request comments, and to communicate informally with their constituents.

Observers. All Plenary Group and Technical Working Group meetings will be open to the public. However, in order for the Plenary and Technical Working Groups to achieve their goals, discussion and deliberation at work sessions must be focused and manageable. Participation by non-members of the Plenary Group will be at the discretion of the Plenary Group members as a whole. Plenary Group and Technical Working Group meetings will include a period of time for public comment.

Communications with the media. Work sessions of the Plenary Group and the Technical Working Group will be open to the public, including the media. The consensus process is a solution-oriented, problem solving approach, not a platform for lobbying the public through the media. The deliberations of the Plenary Group should not be used as opportunities for individual members to posture in order to gain the attention of the media.

If the Plenary Group as a whole or the Coordinating Committee decides that there is a need for the Group to communicate formally with the press, they will designate a spokesperson(s) and/or draft a statement. Stakeholders can refer members of the press to the CDR Team for questions about the process.

In communicating with the media and the general public, a clear distinction should be made among preliminary information, concept papers or proposals under consideration and final decisions. It is important to differentiate between discussions and decisions. Preliminary documents will be marked with "DRAFT" or "FOR DISCUSSION PURPOSES ONLY."

Each Plenary Group or Technical Working Group member is free to speak with the press on behalf of the agency or constituency he or she represents, but must make it clear to the press that his or her comments should not be attributed to the whole stakeholder group. No Plenary Group member will formally speak for or represent the Plenary Group without express authorization by consensus of the Plenary Group as a whole. No Plenary Group Member will characterize to the press the point of view of other stakeholder representatives.