

RECORD OF DECISION
MISSOURI RIVER MASTER WATER CONTROL MANUAL
REVIEW AND UPDATE

I have reviewed the Missouri River Master Water Control Manual Review and Update Final Environmental Impact Statement (FEIS), March 2004; the U.S. Fish and Wildlife Service's (USFWS) 2000 Biological Opinion¹ and 2003 Amendment² to the 2000 Biological Opinion (2003 Amended BiOp) on the operation of the Missouri River Mainstem Reservoir System, the operation and maintenance of the Missouri River Bank Stabilization and Navigation Project, and the operation of the Kansas River Reservoir System; as well as comments and correspondence received in response to the public coordination of these documents. I find the preferred alternative water control plan as described in the FEIS and as modified in this Record of Decision (herein Selected Plan) is consistent with all statutory and regulatory requirements, including applicable environmental statutes and the Corps' treaty and trust responsibilities to the Missouri River Basin Tribes; provides for the Congressionally authorized uses of the Mainstem Reservoir System (System); and is in the public interest. I therefore approve the Selected Plan for the System, and its incorporation into the new Missouri River Master Water Control Manual (Master Manual) for the System.

The System is comprised of six dam and reservoir projects authorized by the Rivers and Harbors Act of 1935 and the Flood Control Act of 1944 to operate as an integrated system providing for flood control, navigation, irrigation, hydropower, water supply, water quality, recreation, and fish and wildlife. In enacting the 1944 Flood Control Act, Congress did not assign a priority to these operational purposes. Instead, it was contemplated that the Corps, in consultation with affected interests and other agencies, would consider all of the authorized purposes when making decisions to optimize development and utilization of the water resources of the Missouri River basin to best serve the needs of the people. The FEIS did not assume a priority for any economic use or environmental resource, and recognized there may be occasions where conflicts exist between the individual authorized purposes. The new Master Manual describes the water control plan and the objectives for the integrated regulation of the System by providing guidance for the regulation of Fort Peck, Garrison, Oahe, Big Bend, Fort Randall, and Gavins Point projects.

¹ Transmitted by letter dated November 30, 2000.

² Transmitted by letter dated December 16, 2003.

The Selected Plan includes several changes from the previous Master Manual's water control plan. The modifications are as follows:

- drought conservation measures;
- unbalancing of the upper three reservoirs;
- non-navigation flows; and
- an adaptive management process.

Drought Conservation Measures

Under the Selected Plan, the navigation service level and season length would be reduced to conserve stored water in the upper reservoirs during extended drought periods. The drought conservation criteria consist of “guide curves” for the determination of flow support for navigation and other downstream purposes and navigation season length.

The Selected Plan calls for suspension of navigation service if System stored water is at or below 31 MAF on March 15 of any year, which would most likely coincide with a national drought emergency. If any of the studies performed for the development of the Annual Operating Plan (AOP) indicate that the amount of stored water will be at or below 31 MAF by the upcoming March 15, the Corps will notify the Secretary of the Army. Also, approval from the Secretary of the Army will be required prior to implementation of back-to-back non-navigation years. The Corps will promptly inform basin stakeholders of a notification to the Secretary of the Army and of the Secretary's decision regarding suspension of navigation.

Unbalancing of the Upper Three Reservoirs

Intra-system unbalancing under the Selected Plan is implemented in those years when the reservoirs are not drawn down as a result of severe droughts. The unbalancing process is rotated among the upper three reservoirs on a 3-year cycle. Intra-system unbalancing provides for resident fishery production by lowering one of the three reservoirs allowing vegetation to grow around the rim. The subsequent year the reservoir is refilled, inundating the vegetation around the perimeter, which is used by adult fish for spawning and by young reservoir fish to hide from predators. The third year, the reservoir rises during the fish spawn and then slowly falls for the remainder of the year so that it is positioned to be at low elevation the following year. Unbalancing would also provide more emergent sandbar and shoreline habitat for the Endangered Species Act (ESA) listed birds.

Non-navigation Flows

The Selected Plan includes minimum flows for periods when navigation is not supported during droughts, or other “non-navigation” periods. These flows provide for water supply to the thermal powerplants and other municipal and industrial intakes on the river or reservoirs. Concerns were expressed regarding adequate flows to provide for cooling at thermal powerplants in the summer, and to serve water supply intakes during river ice

conditions in the winter. This resulted in the inclusion of higher non-navigation flows in the Selected Plan. The Selected Plan recognizes that all of the System dams will be regulated to ensure adequate flows to serve water supply in the river reaches downstream of the System and between the System reservoirs, to the extent reasonably practicable.

Adaptive Management Process

The Selected Plan includes an adaptive management process that recognizes scientific uncertainty and the potential for future physical changes. As physical changes occur or uncertainties are reduced, the adaptive management element of the Selected Plan allows flexibility to adjust System regulation. System regulation changes have been made using an adaptive management approach for many years.

The Corps recognizes that changes in the operation of the System may impact many river uses and is committed to ensuring that the public is actively involved and well informed of potential changes in System regulation and has the opportunity to comment on those proposed changes prior to any decision on implementation. The adaptive management process will be used to implement changes designed to improve the benefits provided by the System, including benefits to the threatened and endangered species. Decisions regarding actions proposed through the adaptive management process will meet the Corps' treaty and trust responsibilities to the Tribes and conform to all of the applicable requirements of Federal laws including the National Environmental Policy Act, Endangered Species Act, and the Flood Control Act of 1944.

The Corps' public AOP process will continue under the Selected Plan. The AOP process involves the development and publishing of a draft in the fall of each year. The Draft AOP forecasts the regulation of the System for various runoff scenarios for the remainder of the current year, plus the following calendar year. After public meetings and comments are received, appropriate changes are made to produce a Final AOP. In the spring, the Corps again conducts public information meetings providing the current hydrologic conditions in the basin and the expected effects of System regulation for the remainder of the year given the forecast and likely runoff scenarios. The System is regulated to follow the Final AOP as closely as possible for the remainder of the year. Not all operating circumstances are covered in the AOP; flexibility to deviate from the Final AOP is necessary and prudent for unusual or changed circumstances. This flexibility allows the Corps to regulate the System for unanticipated events. Significant deviations will be coordinated and approved by the Northwestern Division Commander.

Responsibilities Under the Endangered Species Act

The Selected Plan, in combination with a comprehensive Missouri River Recovery Implementation Program (MRRIP), fulfills the Corps responsibilities under the ESA. The U.S. Fish and Wildlife Service (USFWS), in the 2003 Amendment to the 2000 Biological Opinion (Amended 2003 BiOp), made a no jeopardy determination for the endangered interior least tern and the threatened piping plover, and a jeopardy

determination with a Reasonable and Prudent Alternative (RPA) for the endangered pallid sturgeon. The USFWS also concluded the Selected Plan will not destroy or adversely modify piping plover critical habitat.

The RPA flow components for pallid sturgeon replaced the Corps' proposed three-year re-evaluation with a "feasibility, flow development, and adaptive management" element to determine how flows can be provided that are essential for the survival of the pallid sturgeon by March 2006. The evaluation of a "spring rise" described in the 2003 Amended BiOp will include a review of the status of the species, the scientific findings of a research, monitoring, and evaluation program, the progress and success of measures implemented to date, and other relevant new information. Decisions concerning implementation of additional measures or modification of existing measures, including potential release changes out of Gavins Point Dam, will be made through the adaptive management process. The two-year re-evaluation will include input from Missouri River stakeholders to foster conservation of ESA-listed species and the broader ecosystem values of the Missouri River while providing other Congressionally authorized System project purposes. This process has been incorporated into the Selected Plan.

Another RPA element states that when 1,200 acres of new shallow water habitat for pallid sturgeon have been made available, the Corps, in consultation with the USFWS, may modify the summer flows to take advantage of that habitat and more fully meet the Congressionally authorized System project purposes. In letters to the USFWS dated February 13, 2004 and March 2, 2004, the Corps identified a plan and biological rationale to support development of shallow water habitat in an expanded reach from Ponca State Park to the Osage River by July 1, 2004. By letter dated March 5, 2004, the USFWS concurred that there is sufficient biological information to support the expanded reach and also supported the Corps' decision to develop 1,200 new acres of shallow water habitat as a means to address an immediate need for survival and recovery of the pallid sturgeon. The Corps and USFWS will consult in early June 2004 to take into account the newly developed shallow water habitat in association with a request for flow modification to provide for all project purposes including service to navigation throughout the summer of 2004. The Selected Plan reflects this agreed upon approach to implement this element of the RPA.

As set forth above, the FEIS and this Record of Decision, which have been prepared pursuant to the National Environmental Policy Act, address, among other things, the Corps' responsibilities concerning compliance with the requirements of the ESA for the flow measures related to the operation of the Missouri River Mainstem System. The Corps will address in separate correspondence to the USFWS its commitment to the non-flow measures contained in the 2003 Amended BiOp. That correspondence will also contain the details of the status and progress of the Corps' implementation of all the non-flow measures, including habitat development, pallid sturgeon research and monitoring.

Other Considerations

Careful consideration was given to the overall public interest and the economic, social, cultural and environmental effects throughout the development of the Selected Plan, which is the environmentally preferred plan. All applicable laws, Executive Orders, regulations and local plans were considered in evaluating the alternatives. Over 500 alternatives were addressed in four draft EISs and the FEIS. The analysis of these alternatives, and the comments and discussions they engendered are incorporated here by reference. All practicable means were adopted to avoid or minimize adverse impacts, and existing actions and programs are in place to address adverse impacts to the warm water fishery below Fort Peck and Fort Randall and historical properties including Tribal cultural resources and historical sites. System stored water and releases are monitored to ensure that the System regulation enhances water quality consistent with applicable provisions of the Clean Water Act, to the extent reasonably possible.

The Corps will conduct the appropriate surveys, provide required documentation, and enter into appropriate Memoranda of Agreement or Programmatic Agreements to address any adverse effects to cultural resources that may result from implementation of the Selected Plan. Cultural resources management plans are being developed for all lands owned and managed by the Corps. In addition, special emphasis has been given to the development of a Section 106 Programmatic Agreement for the operation and management of the System. This agreement has been drafted in consultation with Tribes, the Advisory Council on Historic Preservation, certain State Historic Preservation Officers, the National Trust for Historic Preservation, and other interested parties. The completion of the management plans and the programmatic agreement will address the Corps' compliance with the National Historic Preservation Act.

In addition, actions are being taken by the Corps under the MRRIP to restore the Missouri River ecosystem, and to protect and recover ESA-listed species. These actions include habitat restoration, hatchery support, and a comprehensive research, monitoring and evaluation program for the three ESA-listed species. MRRIP actions will be identified, reviewed, modified, and implemented through coordination with a Missouri River Recovery Implementation Committee, which will include stakeholder representation to ensure a comprehensive approach to recovery implementation while providing for other Congressionally authorized System project purposes.

In an order dated February 26, 2004, the United States District Court for the District of Minnesota, in Case No. 03-MD-1555 (PAM), In re: Operation of the Missouri River System Litigation, ordered the Corps to sign the Record of Decision by March 19, 2004.

The notice of availability of the FEIS filed in the Federal Register (FR) by the Environmental Protection Agency (EPA) also contained a waiver of the 30-day review period for the FEIS, see 69 FR 10442-10443 (2004).

Statement of Decision

Based on the foregoing, I hereby adopt the Selected Plan for incorporation into Chapter 7 of the new Master Manual. In addition, the new Master Manual is hereby approved for use as the Missouri River Mainstem Reservoir System Master Water Control Manual effective March 19, 2004. Periodic review of the water control plan will provide opportunities to make adjustments. Appropriate public coordination to satisfy environmental, economic and technical issues will occur prior to any modifications. The public will best be served by implementation of the Selected Plan set forth in this Record of Decision.

Date: _____

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