

Framework for Establishing the Missouri River Recovery Implementation Committee

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ORIGINS AND EVOLUTION OF THE MRRIC

The U.S. Army Corps of Engineers (Corps) and the U.S. Fish and Wildlife Service (USFWS) began discussing the concept of a multi-stakeholder advisory group in the course of their Endangered Species Act consultations, during the Corps' review and updating of the Missouri River Master Water Control Manual (Master Manual). The envisioned purpose for such a group was to make recommendations about ways to improve the functioning of the river that would promote endangered species recovery (including, but not necessarily limited to the pallid sturgeon, interior least tern and piping plover) while minimizing impacts on human uses.

This idea was reinforced by the National Research Council's (NRC) 2002 Report, "*The Missouri River Ecosystem: Exploring the Prospects for Recovery.*" The NRC report¹ recommended that a multi-stakeholder group be established to participate in a collaborative process with the Corps. The proposed purpose of the multi-stakeholder group would be to help determine the goals and specific restoration activities for Missouri River ecosystem improvement, and it would monitor the effectiveness of these activities using an adaptive management approach. Robust stakeholder involvement was recommended as an essential aspect of successful adaptive management. The NRC report recommended that such a group should have broad participation by federal agencies, Missouri River Basin Tribes, states, and municipalities, and a wide range of nongovernmental stakeholders and groups with stakes and an interest in Missouri River management.

The Corps initially proposed to form a multi-stakeholder advisory group in its 2003 Biological Assessment.² The Assessment accompanied a request to USFWS to reinitiate formal consultation related to continuing efforts by the Corps to update the Master Manual. In the Assessment, the Corps called the proposed advisory group the "Missouri River Recovery Implementation Committee" (or MRRIC). The USFWS, in its subsequent "*2003 Amended Biological Opinion on the Operation of the Missouri River Mainstem Reservoir System,*"³ indicated its full support for establishing a MRRIC. And then, once again in the 2004 Record of Decision⁴ updating the Missouri River Master Water Control Manual, the Corps confirmed its intention and commitment to establish the Missouri River Recovery Implementation Committee.

To help establish the Missouri River Recovery Implementation Committee in the midst of the continuing sharp differences among many parties in the basin, the Corps and the USFWS turned to the U.S. Institute for Environmental Conflict Resolution⁵ (U.S. Institute) for assistance. The

¹ The National Research Council Report is available at: <http://www.nwd-mr.usace.army.mil/rcc/mrric.html>

² USACE's Biological Assessment is available at: <https://www.nwd.usace.army.mil/pa/mastermanual.asp>

³ USFWS's Biological Opinion is available at: <https://www.nwd.usace.army.mil/pa/mastermanual.asp>

⁴ USACE's Record of Decision is available at: <http://www.nwd-mr.usace.army.mil/rcc/reports/pdfs/FinalMod.pdf>

⁵ The U.S. Institute was established by Congress in 1998, as an independent federal agency to impartially provide expertise in designing, convening, and conducting collaborative efforts to jointly develop solutions to difficult environmental controversies.

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request for assistance from the U.S. Institute was also endorsed by the Directors of the then Missouri River Basin Association⁶ and several other federal agencies with programs in the Missouri River basin, including the Environmental Protection Agency, the National Park Service, the Bureau of Reclamation, the U.S Geological Survey, and the Western Area Power Administration. A number of nongovernmental organizations active in the basin also endorsed seeking the assistance of the U.S. Institute.

Based on the unanimous recommendation of an interview panel comprised of a wide range of governmental and nongovernmental stakeholders,⁷ the U.S. Institute selected and contracted with CDR Associates⁸ to conduct an initial Situation Assessment. The purpose of the Situation Assessment was to evaluate the feasibility of convening a MRRIC under the current circumstances, the likelihood that a collaborative effort would be successful, and how a MRRIC should be convened, if the decision was made to proceed.

In its Situation Assessment Report⁹ completed in April 2006, the CDR

MISSOURI RIVER RECOVERY PROGRAM OVERVIEW

The MRRIC is one component of

the Missouri River Recovery Program (MRRP)

As a federally funded set of measures, the MRRP is being carried out by the Corps in collaboration with the USFWS, tribes, states, and other basin stakeholders. The MRRP incorporates the requirements of the Missouri River Bank Stabilization and Navigation Project Fish and Wildlife Mitigation Project with the actions required by the USFWS's 2003 Amended Biological Opinion on the Corps' operation of the Missouri River Mainstem Reservoir System, the Bank Stabilization and Navigation Project, and the Kansas Reservoir System.

The measures encompassed by the MRRP include:

- ◆ **Habitat Construction and Channel Modification**
 - The creation of **Shallow Water Habitat** along the Missouri River provides areas with a diversity of depths and velocities to serve as spawning and nursery habitat for the endangered pallid sturgeon. Channel modifications also create this diversity of habitat while retaining the Bank Stabilization and Navigation Project's authorized purposes.
 - **Emergent Sandbar Habitat** provides the sandy, vegetation-free nesting areas preferred by the endangered interior least terns and threatened piping plovers.
- ◆ **Propagation and Hatchery Support** – Improvements to pallid sturgeon hatchery facilities ensure successful spawning, rearing, and stocking to partially offset the current lack of natural reproduction.
- ◆ **Research, Monitoring, and Evaluation** – A comprehensive research, monitoring, and evaluation program continuously provides and analyzes data to further refine scientific understanding and measure performance.
- ◆ **Flow Modifications** – Changes in releases from Ft. Peck Dam and Gavins Point Dam are intended to benefit the pallid sturgeon.
- ◆ **Adaptive Management** – Adaptive management is a science- and performance-based approach to ecosystem management in situations where predicted outcomes have a high level of uncertainty. Rather than simply changing management direction in the face of poor outcomes, AM is a planned approach to reliably improve management practices over time.
- ◆ **MRRIC** – The MRRP will be reviewed, modified, and implemented through coordination with the MRRIC, which will include broad and diverse stakeholder representation, to ensure that public values are incorporated into recovery program actions.

⁶ Minutes from the September 8-9, 2004 MRBA meeting are available at: <http://www.mrba-missouri-river.com/Minutes%209-8-04.doc>

⁷ To view a copy of the email that lists the participants on the interview panel and announces the selection of CDR Associates, based on its recommendation, see:

<http://www.nwd-mr.usace.army.mil/mmanual/mrric/SelectionofMediationTeam.pdf>

⁸ CDR Associates is a Colorado-based nonprofit organization with over 25 years of experience providing conflict resolution services.

⁹ The "Situation Assessment Report on the Feasibility and Convening of a Missouri River Recovery Implementation Committee" is available at: <http://www.nwd-mr.usace.army.mil/rcc/mrric.html>

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assessment team concluded that a broadly representative MRRIC was needed to help coordinate recovery-related activities of concerned federal agencies, tribal and state governments, and nongovernmental stakeholders in the basin. By establishing the MRRIC, these groups could work together to develop widely supported recommendations on endangered species recovery efforts and achieve an acceptable balance with other important uses of the river. The Situation Assessment highlighted opportunities as well as significant obstacles to successfully convening the MRRIC. Given these obstacles, the conclusion of the assessment team was that key federal agencies would need to take a strong leadership role in initially convening the MRRIC. Once established, however, the assessment team suggested that the Committee could take a stronger role in deciding how it would function.

Based on the Situation Assessment recommendations, the Missouri River Basin Interagency Roundtable (MRBIR), which is composed of the executives of federal agencies with activities in the basin, appointed an interagency Federal Working Group¹⁰ to determine how best to proceed in establishing the MRRIC. With continued assistance from the U.S. Institute, the Federal Working Group jointly developed a “Proposed Framework for Establishing the Missouri River Recovery Implementation Committee.”¹¹ That Proposed Framework was broadly distributed in August 2006 to tribal and state governments and basin stakeholders for feedback. The Federal Working Group also held six “open house” meetings throughout the basin¹² during September and October 2006 to present their “Proposed Framework for Establishing the MRRIC” and to receive feedback for improvements from interested stakeholders. In addition, members of the Federal Working Group also met with a number of other basin organizations that requested an opportunity to discuss the Proposed Framework. Tribal liaisons on the Federal Working Group contacted each of the 28 tribes in the basin to ensure they were aware of the Proposed Framework and to solicit any concerns as well as suggestions for improvement. Over 30 individuals and organizations also submitted written comments on the Proposed Framework.

PUBLIC FEEDBACK ON THE EARLIER PROPOSED FRAMEWORK¹³

The feedback provided by many thoughtful commenters on the previous Proposed Framework proved to be extremely helpful to the Federal Working Group in improving the approach it has now decided to pursue for establishing the MRRIC. That approach is described below, along with explanations of how the different aspects of this approach respond to the comments and suggestions the Federal Working Group received.

¹⁰ For membership of the Federal Working Group see:
<http://www.nwd-mr.usace.army.mil/rcc/FederalWorkingGroup.html>

¹¹ For a copy of the Proposed Framework, see:
<http://www.nwd-mr.usace.army.mil/rcc/reports/mrric/MRRICProposedFramework.pdf>

¹² For a list of open house meetings and their locations, see the September 2006 MRRIC Newsletter at:
<http://www.nwd-mr.usace.army.mil/rcc/reports/mrric/MRRICNewsSept06.pdf>

¹³ Much of the feedback received on the Proposed Framework document focused on issues that related to MRRIC itself rather than the proposed planning process for developing a recommended initial Charter for MRRIC. It is expected that many of the issues raised, however, will be discussed and addressed during the Planning Group process. To view the written comments received on the Proposed Framework, see:
<http://www.nwd-mr.usace.army.mil/rcc/ProposedFrameworkInputIndex.html>

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PLANNING GROUP PROCESS FOR DEVELOPING A RECOMMENDED CHARTER FOR THE MRRIC¹⁴

The Federal Working Group has decided to convene a broadly representative Missouri River Recovery Planning Group process to develop a recommended initial Charter for the MRRIC over an anticipated nine-month period.¹⁵ The Charter will articulate important aspects of the MRRIC that will be used to focus and guide its direction and operation.¹⁶ It is expected that successful development of the Charter will allow for the formal establishment of the MRRIC in early 2008.

The Planning Group process will be led by two Co-Chairs selected by the federal executives of the Missouri River Basin Interagency Roundtable for their integrity, nonaligned status on Missouri River issues, and their expertise in leading collaborative efforts aimed at developing pragmatic consensus-based solutions in situations with competing interests. The Co-Chairs will be providing assistance to the Planning Group process on an independent basis through the auspices of the U.S. Institute.

The Planning Group process will provide four ways for interested federal agencies, tribal and state governments, local governments, nongovernmental stakeholders, and the public at large, to participate.¹⁷ Opportunities to participate include: on the Drafting Team, on the Review Panel, in Public Workshops, or through submitting public comments. Each different way of participating has different time requirements and degrees of commitment to working collaboratively with others¹⁸ to build consensus-based recommendations.¹⁹

¹⁴ Although most commenters did not indicate objection to the Federal Working Group's proposal to form a planning group to develop a recommended initial Charter for MRRIC, several commenters were critical of this approach. Some suggested that the federal agencies should determine the initial Charter for MRRIC and that MRRIC should be formed immediately. Because of the continuing divergence of viewpoints about the fundamental purpose of MRRIC, however, the Federal Working Group believes that additional discussions and consensus-building efforts are warranted to help ensure that the establishment of MRRIC is based on a strong foundation of shared understanding and broad consent regarding its mission.

¹⁵ Several commenters expressed frustration with the nine-month length of time proposed by the Federal Working Group to develop a recommended initial Charter for MRRIC through a planning group process. In their opinion, much less time should be devoted to this task. The Federal Working Group would also like to see MRRIC established as soon as possible. However, the Federal Working Group believes that nine months is a reasonable amount of time to develop recommendations on the initial Charter for MRRIC, especially given the divergent viewpoints in the basin and the challenges associated with ensuring opportunities for broad participation by basin stakeholders.

¹⁶ Many commenters responded to the suggested purpose, focus, and authority for MRRIC described by the Federal Working Group in its Proposed Framework document. Because of the divergent views expressed about the appropriate scope of MRRIC, the Federal Working Group believes that additional discussions and consensus building efforts are warranted to help ensure that the establishment of MRRIC is based on a strong foundation of shared understanding and broad consent regarding its mission.

¹⁷ Many commenters expressed strong concerns about the time commitment required to participate in the planning process that was described in the Federal Working Group's original Proposed Framework document. The design of the Missouri River Recovery Planning Group process has addressed this concern by establishing four ways to participate—each with differing levels of time commitment required. The process also ensures that all interested parties will have the opportunity to be involved before determining the final recommended initial Charter for MRRIC.

¹⁸ The Federal Working Group recognizes that not all parties in the basin are prepared to work together collaboratively with others, including traditional adversaries, in developing joint solutions. The design of the

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Drafting Team

Participation on the Drafting Team will require the greatest time commitment, as well as the greatest personal commitment to working collaboratively with others. As its name implies, the Drafting Team will work together in developing the initial draft of a proposed Charter for the MRRIC. In accomplishing its task, the Drafting Team members will learn about adaptive management, study the lessons from other large-scale restoration efforts, and build their skills in collaborative problem solving. The Drafting Team will also respond to feedback, comments, and suggestions received from a broadly representative Review Panel, from participants in Public Workshops, and from submitted Public Comments, prior to finalizing and forwarding its recommended initial Charter for the MRRIC to the Federal Working Group. It is currently anticipated that the Drafting Team will hold meetings in March, April, May, July, August, September, October, and November of 2007. Most meetings will be scheduled for 1.5 days in different transportation hub cities throughout the basin. The April meeting, however, will be a combined meeting with the Review Panel held in conjunction with the National Conference on Ecosystem Restoration, April 23-27, in Kansas City, MO.²⁰ Members of the Drafting Team will also be expected to participate in conference calls and frequent email communications.

Review Panel

Participation on the Review Panel will provide those with a strong interest in the development of the MRRIC an opportunity to have a significant role in determining the final recommendations of the Planning Group process. Participation on the Review Panel may be an appropriate opportunity for those who want to ensure that their vital interests are not jeopardized by the final recommended Charter, but who cannot necessarily devote the considerable time needed to work collaboratively with others in developing joint solutions. The Review Panel will have the opportunity to learn about adaptive management approaches to ecosystem restoration, as well as lessons learned from other large-scale restoration efforts. The Review Panel will also be encouraged to join the Drafting Team members in building their collaborative problem-solving skills. It is currently anticipated that the first meeting of the Review Panel will be a combined meeting with the Drafting Team held in conjunction with the National Conference on Ecosystem Restoration, April 23-27, in Kansas City, MO.²⁰ Additional 1.5-day meetings will be held in conjunction with the Drafting Team in July, and October of 2007. Review Panel members will be expected to carefully study the proposals developed by the Drafting Team in preparation for meetings.

All meetings of the Drafting Team and Review Panel will be announced and open to the public²¹ for observation. Opportunities for public comment will be provided at each meeting.

Missouri River Recovery Planning Group process provides meaningful opportunities for participation by all interested parties regardless of their commitment to collaborative approaches to problem solving.

¹⁹ Most commenters agreed with a consensus-based approach to developing recommendations. Many expressed concerns, however, that fallback procedures are needed to prevent an impasse if consensus cannot be achieved. The Federal Working Group acknowledges this inadequacy in its Proposed Framework document. This issue will be further addressed in the proposed Operating Procedures and Ground Rules for the Planning Group process.

²⁰ Information about the National Conference on Ecosystem Restoration is available at:
<http://www.conference.ifas.ufl.edu/NCER2007/>

²¹ Many commenters recommended that meetings needed to be open to the public to ensure transparency of the process. The Federal Working Group agrees.

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Tribal Outreach

Special outreach efforts will be made to ensure that all non-participating tribes are kept informed of the process and have the opportunity to request consultation with the federal government consistent with their status as sovereign governments.

Public Workshops

Participation in Public Workshops will provide others with a strong interest in the MRRIC a way to contribute and have a meaningful voice in helping shape the Planning Group's final recommendations on the Charter for the MRRIC. Participants will be able to accomplish this with the more limited, yet not insignificant, time commitment involved in attending a half-day workshop held in their geographic region of the basin.

Public Outreach

In-person, email, and web-based outreach efforts are planned to keep all interested members of the public informed about the Planning Group process and the development of a recommended initial Charter for the MRRIC. A formal opportunity will be provided for public review and comment on the proposed the Charter for the MRRIC, which the Drafting Team will consider and respond to in developing its final recommended Charter to the Federal Working Group.

ROLE OF THE FEDERAL AGENCIES

The federal agencies will play an advisory role²² in the Planning Group process. Members of the Federal Working Group will attend the Drafting Team and Review Panel meetings where they will function as a caucus. No more than five designated representatives of the Federal Working Group will participate in discussions – and then, only in an advisory capacity. They will serve as informational resources and provide guidance regarding opportunities and constraints, as well as agency responsibilities and authorities associated with the federally funded Missouri River Recovery Program. The Federal Working Group's representatives will not participate in making decisions regarding the Planning Group's recommendations on the initial Charter for the MRRIC. The Federal Working Group, as a whole, will receive and consider the final recommendations of the Planning Group process. The Federal Working Group will consult with the federal executives on the Missouri River Basin Interagency Roundtable (MRBIR) in determining how to implement the recommendations resulting from the Planning Group process.²³

²² A number of commenters suggested that the federal agencies should only have an advisory role in the planning process to develop a recommended initial Charter for MRRIC. The argument was that the federal agencies should not participate in making the decisions about recommendations to themselves. The Federal Working Group has accepted this argument. Furthermore, the Federal Working Group has agreed to designate no more than five representatives who will participate in the Review Panel discussions in an advisory capacity; they will not participate in making decisions on the recommendations. That said, the members of the Federal Working Group are responsible for implementing the federally funded Missouri River Recovery Program, so they consider their participation essential to ensure that recommendations result in options that are viable within existing legal requirements and constraints.

²³ The Federal Working Group anticipates that broadly supported recommendations emerging from the Charter development process are likely to be adopted and implemented by the federal agency executives. The federal agencies will need to determine how to proceed with respect to any issues over which consensus cannot be achieved.

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PARTICIPATION OF TRIBES

The federal government has a unique and special relationship with Native American tribes based on the federal government's trust responsibilities, and its acknowledgement and respect for tribal sovereignty. The Federal Working Group seeks to establish a collaborative working relationship, building on many existing federal/tribal partnerships. Such a collaborative relationship will help determine how to accomplish recovery of the endangered species in the basin, while continuing to meet critical human needs and avoiding or minimizing adverse impacts on important cultural and natural resources and socio-economic activities. Chairpersons of tribes in the basin will be invited by the Federal Working Group to appoint a representative to engage in the Planning Group process at their desired level of participation. It is hoped that tribes will choose to actively participate. The Federal Working Group understands and agrees that a tribe's participation in a collaborative multi-stakeholder process does not jeopardize continued recognition of its sovereign independence and is not a substitute for formal government-to-government consultations.²⁴

PARTICIPATION OF STATES

As sovereign entities mutually dependent on a shared resource, the diverse and sometimes competing interests of the states in the Missouri River basin must be addressed and accommodated if effective recovery actions are to be successfully implemented. The Federal Working Group seeks to establish a collaborative working relationship, building on many existing federal/state partnerships. A collaborative working relationship will help determine how to accomplish recovery of the endangered species in the basin, while continuing to meet critical human needs and avoiding or minimizing adverse impacts on important socioeconomic activities. Governors of states in the basin will be asked by the Federal Working Group to designate their personal representatives to engage in the Planning Group process at their desired level of participation.²⁵

PARTICIPATION OF LOCAL GOVERNMENTS²⁶

The Federal Working Group recognizes the vital role of local governments in directly addressing the immediate public service needs of residents in the basin and in making local land use decisions. The development of a long-term approach to recovering endangered species in the basin will undoubtedly benefit from incorporating the insights provided by the perspective of local governments. The engagement of local governments will be especially important later on,

²⁴ The Federal Working Group believes its proposed approach to tribal participation addresses the concerns that have been expressed by tribes thus far. The Federal Working Group welcomes additional feedback in this regard to ensure mutual understanding and acceptable arrangements for tribal participation.

²⁵ The Federal Working Group has participated in discussions with members of MoRAST regarding state representation in the Planning Group process. The Federal Working Group recognizes that the state of Missouri is not a member of MoRAST and has met with them separately. The Federal Working Group will be asking the Governors of basin states to formally designate their representatives to the process.

²⁶ A number of commenters strongly recommended that greater opportunities be provided for participation by local government entities. The Federal Working Group agrees with this assessment and believes that the current approach will help ensure those opportunities.

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as specific restoration actions are identified by the MRRIC in order to maximize the potential benefits resulting from complementary efforts. Local government involvement will also help to prevent or minimize undesired or unintended impacts occurring at the local level.

Local governmental entities and associations of local governments in the basin will be broadly invited to submit an application to participate on either the Drafting Team or the Review Panel for the Planning Group process. Ideally, local governments will also be well represented at the regional Public Workshops to review and provide feedback on the proposed Charter for the MRRIC. Those who cannot attend the workshops will be encouraged to submit written comments regarding their concerns and suggestions for improvement.

PARTICIPATION OF NONGOVERNMENTAL STAKEHOLDERS

The Missouri River system has functioned for over 50 years to provide multiple important benefits to society for purposes that include: flood control, navigation, irrigation, hydropower, water supply, water quality, recreation, and fish and wildlife. Over time, many individuals and communities have built their social and economic livelihoods based on the assumption that these benefits would continue indefinitely into the future. Not surprisingly, potential changes in the management or operation of the river are viewed by many stakeholders as a threat to their way of life and their economic wellbeing. Decades of political discord and litigation have resulted from the lack of appropriate collaborative problem-solving forums for diverse interests to work together through the difficult challenges associated with providing expected benefits to all users of the river. And now, during a period of prolonged drought, the operational flexibility to address endangered species protections is further constrained.

The Federal Working Group recognizes that successful implementation of the Missouri River Recovery Program will require broad public support and the consent of stakeholders with long-established interests. Stakeholder involvement will be critical for avoiding or minimizing undesired or unintended impacts of recovery actions, as well as for identifying and creating opportunities for joint gains.

Nongovernmental stakeholders in the basin will be broadly invited to submit an application to participate on either the Drafting Team or the Review Panel. The Federal Working Group anticipates that many stakeholders will also choose to participate in the regional Public Workshops to review and provide feedback on the proposed Charter for the MRRIC, or to submit written comments regarding their concerns and suggestions for improvement.

SELECTION AND COMPOSITION OF THE PLANNING GROUP

The Chairpersons of basin tribes and the Governors of basin states will be invited to designate their personal representatives and alternates to the Missouri River Recovery Planning Group process. It is expected that some will choose to participate on the Drafting Team and others on the Review Panel.

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The federal executives of the Missouri River Basin Interagency Roundtable will formally designate no more than five federal agency representatives who will function as advisors to the Planning Group process.

A broad invitation will be extended to nongovernmental stakeholders and local governments in the basin to participate on the Drafting Team or the Review Panel. Individuals interested in participating will be asked to complete an application for submission to the U.S. Institute for Environmental Conflict Resolution. The U.S. Institute will review all applications received and select the nongovernmental and local government participants to the Planning Groups²⁷ based on the following criteria:

Selection Criteria²⁸

Drafting Team

(Approximately 25 total members)

- ✓ Ability to commit the time required
- ✓ Willingness to make a good faith effort to seek balanced solutions that address multiple interests and concerns
- ✓ Demonstrated ability to work constructively with others, including traditional adversaries, to build joint solutions
- ✓ Willingness to support and adhere to the ground rules and operating protocols adopted by the Drafting Team
- ✓ Formal designation or endorsement by an organization or significant constituency as its preferred representative
- ✓ Established communication network to keep constituents informed and efficiently seek their input when needed
- ✓ Commitment to not engage in adversarial communications or unilateral actions that undermine the Planning Group process
- ✓ Overall balance of representation on the Drafting Team and Review Panel

Review Panel

(Approximately 50-75 total members)

- ✓ Ability to commit the time required
- ✓ Willingness to adequately prepare for meetings to ensure informed discussions
- ✓ Willingness to support and adhere to the ground rules and operating protocols adopted by the Drafting Team

²⁷ A number of commenters recommended that the Federal Working Group should not select participants, if stakeholders are to have confidence in the integrity of the Charter development process. A wide variety of methods for selecting participants were suggested, including simply allowing anyone to participate who was interested. Several commenters indicated that the U.S. Institute for Environmental Conflict Resolution had the credibility to ensure a fair selection process. Understanding that any selection process it chose would likely be criticized, the Federal Working Group has asked the U.S. Institute to take on this responsibility because of its experience and expertise in establishing broadly representative advisory bodies.

²⁸ These criteria were drawn from the recommendations provided by the 90+ individuals interviewed during the Situation Assessment process conducted by CDR Associates.

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- ✓ Formal designation or endorsement by an organization or significant constituency as its preferred representative
- ✓ Established communication network to keep constituents informed and efficiently seek their input when needed
- ✓ Overall balance of representation considerations on the Drafting Team and Review Panel

Based on a careful consideration of all those individuals who indicate an interest in participating in the Missouri River Recovery Working Group process, the U.S. Institute for Environmental Conflict Resolution will select the nongovernmental and local government participants on the two Planning Groups. Including the state and tribal representatives, the Drafting Team will be composed of approximately 25 total individuals and the Review Panel approximately 50-75 total individuals.²⁹ No specific numerical quotas have been established for representation of the various interests from throughout the basin on either the Drafting Team or the Review Panel.³⁰ Instead, the goal will be to establish a Planning Group process that is broadly representative and widely perceived to be fairly balanced overall among the various interests in the basin.

OPERATING PROCEDURES AND GROUND RULES FOR PLANNING GROUP

The proposed Operating Procedures and Ground Rules for the Planning Group process will be provided to individuals wishing to apply to serve on the Drafting Team or the Review Panel. Willingness to support, adhere to, and be accountable to the Operating Procedures and Ground Rules will be a requirement for selection.³¹

The primary purpose of the Missouri River Recovery Planning Group process will be to develop a recommended initial Charter for the Missouri River Recovery Implementation Committee. In accomplishing this task, members of the Planning Group (consisting of both the Drafting Team and the Review Panel) will be expected to learn about adaptive management approaches to ecosystem restoration, study the lessons from other large-scale restoration efforts, and build their skills in collaborative problem solving.

²⁹ A number of commenters recommended limiting the number of participants to help ensure greater efficiency. Others advocated that anyone with an interest should be allowed to participate. The Federal Working Group believes the proposed Missouri River Recovery Planning Group process will effectively address both these concerns.

³⁰ Nearly all the commenters on the Proposed Framework document advocated for an increase in the number of representatives allocated for their particular interest. The Federal Working Group believes the strong focus on the specific number of allocated representatives is an indication of the basin's limited experience and familiarity with collaborative consensus-building efforts. Such an approach relies not on securing sufficient votes to numerically defeat one's adversaries, but rather on a mutual acknowledgement of legitimate interests and key concerns along with a commitment to work together to develop joint solutions to shared problems. Understanding that any quota or allocation process it chose will likely be criticized, the Federal Working Group has asked the U.S. Institute to take on this responsibility because of its experience and expertise in establishing broadly representative advisory bodies. The Federal Working Group believes that providing a variety of opportunities for all interested parties to have a meaningful role in developing the recommended initial Charter for MRRIC will satisfactorily address concerns regarding numbers of representatives allocated to the many various interests in the basin.

³¹ During the Situation Assessment process, many of those interviewed emphasized the need to hold all participants accountable for complying with the Operating Procedures and Ground Rules established for the process.

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The Planning Group process is anticipated to take place over a nine-month period and conclude before the end of 2007. This schedule would allow the MRRIC to be formally established in early 2008.

All meetings of the Drafting Team and Review Panel will be announced and open to the public for observation. An opportunity will be provided at each meeting for the public to offer comments.

Only after consulting with the Review Panel and considering the results from regional public workshops and the public comment period, will the Drafting Team determine its final recommended Charter for the MRRIC. The Drafting Team will strive to reach consensus on its recommendations to the Federal Working Group.³² If consensus cannot be achieved on certain elements of the recommended Charter within the timeframe established for the process, the different perspectives on the particular issue will be documented and provided to the Federal Working Group for its consideration in determining how to proceed with establishing the MRRIC.

The Missouri River Recovery Planning Group process will be led by two Co-Chairs selected by the federal executives of the Missouri River Basin Interagency Roundtable for their integrity, nonaligned status on Missouri River issues, and their expertise in leading collaborative efforts aimed at developing pragmatic consensus-based solutions in situations with competing interests.

The Co-Chairs will provide assistance to the Planning Group process on an independent basis through the auspices of the U.S. Institute. The Co-Chairs for the Planning Group will be assisted by an independent and neutral facilitation team selected with the assistance of the Drafting Team and contracted under the auspices and supervision of the U.S. Institute for Environmental Conflict Resolution.³³

³² While nearly all commenters expressed strong support for a consensus-seeking process, many had concerns that a requirement for unanimity is not realistic given the divisions in the basin. Many suggested that a “fall-back” option was needed when consensus could not be achieved to keep the process from reaching an impasse and preventing the group from forwarding to the Federal Working Group those recommendations on which there was strong agreement. Some suggested resorting to a voting system if necessary; while others strongly advised against such an approach. The Federal Working Group believes that strongly encouraging consensus-based recommendations while allowing for differences to be documented will be the most effective and efficient way to complete the Planning Group process within the established timeframe.

³³ Two commenters indicated their opinion that the U.S. Institute for Environmental Conflict Resolution should not be used to procure a facilitator for MRRIC because their fees were excessive and their services unnecessary. From the perspective of the Federal Working Group, the U.S. Institute was established by Congress to provide conflict resolution expertise for situations like this one. It is highly regarded and was recommended by several sources. As one of its services, the U.S. Institute maintains a National Roster of qualified mediators and facilitators and is familiar with their level of experience. The assistance of the U.S. Institute in selecting a facilitator for the Planning Group will streamline that process to help ensure MRRIC is established in a timely manner. The Federal Working Group relies on the U.S. Institute for more than just selection of facilitators, however. Because of the U.S. Institute’s experience with similar recovery implementation groups throughout the nation, it has extensive knowledge of the benefits and pitfalls of various approaches to establishing such a group and has provided advice and guidance to the Federal Working Group. The Federal Working Group does not envision utilizing the services of the U.S. Institute for the long-term. As MRRIC becomes functional and develops a governance structure and operating protocols, the assistance of the U.S. Institute may no longer be required.

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All members of the Drafting Team and the Review Panel are expected to interact with each other in a civil and respectful manner, regardless of differences that may arise during their discussions and deliberations. Personal attacks and derogatory or demeaning statements directed towards others will not be tolerated and will be grounds for revoking membership on the Planning Group.

TRAVEL REIMBURSEMENT ASSISTANCE³⁴

A limited amount of travel reimbursement assistance will be available for those tribal, local government, and nongovernmental members of the Drafting Team and Review Panel who would otherwise not be able to participate on a consistent basis throughout the Planning Group process. Travel reimbursement will be administered on a confidential basis through the U.S. Institute for Environmental Conflict Resolution.³⁵

PLANNING GROUP PROCESS NOT SUBJECT TO FACAA

The Federal Working Group has determined that the Drafting Team and Review Panel are not subject to the provisions of the Federal Advisory Committee Act (FACA).³⁶ The Federal Working Group has previously proposed that the MRRIC be established under an exemption included in the Endangered Species Act, which stipulates that recovery implementation teams shall not be subject to FACA.³⁷ The issue of whether or not the MRRIC should be established as a FACA Committee will be an item for discussion during the Charter development process.³⁸ The MRRIC language in the recent versions of the reauthorization bill for the Water Resources Development Act (WRDA) stipulates that the MRRIC would be exempt from FACA requirements.

TO APPLY TO SERVE ON THE DRAFTING TEAM OR REVIEW PANEL

Individuals seeking to represent nongovernmental stakeholder interests or local governments, who are willing and available to contribute their time to serve on either the Drafting Team or the Review Panel should contact the U.S. Institute for Environmental Conflict Resolution to obtain an application package. The process of selecting members of the Drafting Team and the Review Panel is expected to be completed by mid-March.

³⁴ Many commenters strongly agreed with the federal agencies' stated intention to offer travel reimbursement assistance to nongovernmental and tribal participants.

³⁵ One commenter suggested that administering a program of travel reimbursement assistance would be difficult and subject to partisanship, likely resulting in additional conflict. The Federal Working Group believes that the U.S. Institute's experience in administering other travel reimbursement programs will ensure a fair and confidential process that complies with federal regulations.

³⁶ The 2001 Federal Advisory Committee Act Final Rule can be viewed at:

http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/FACAFinalRule_R2E-cNZ_0Z5RDZ-i34K-pR.pdf

³⁷ Section 4 of the Endangered Species Act that provides the exemption from FACA can be viewed at:

<http://www.fws.gov/endangered/esaall.pdf>

³⁸ Several commenters requested that the Federal Working Group reconsider its proposal to not charter MRRIC under the Federal Advisory Committee Act. In the opinion of some commenters, a FACA-chartered MRRIC would better ensure a broadly representative, unified, and transparent process, as well as enhance the weight given to its recommendations. The Federal Working Group has not made a final decision in this regard and anticipates that the Missouri River Recovery Planning Group process will examine the pros and cons of establishing MRRIC as a FACA Committee before making its recommendations.

**Framework for Establishing the
Missouri River Recovery Implementation Committee**

The initial meeting of the Drafting Team is scheduled to take place March 28-29, in Omaha, NE.

The first meeting of the Review Panel with the Drafting Team will take place in conjunction with National Conference on Ecosystem Restoration,³⁹ April 23-27, in Kansas City, MO.

To request an application package, please contact:

Pat Lewis
U.S. Institute for Environmental Conflict Resolution
130 South Scott Avenue
Tucson, AZ 85701
(520) 901-8538
lewis@ecr.gov

The deadline for returning completed applications is February 26, 2007.

³⁹ Information about the National Conference on Ecosystem Restoration is available at:
<http://www.conference.ifas.ufl.edu/NCER2007/>