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**ASSOCIATION OF STATES AND TRIBES**

July 28, 2008

Mr. Jeffrey N. Nelson  
North Dakota Legislative Council  
State Capitol  
Bismarck, ND 58505-0360

Dear Mr. Nelson,

This letter and attached information are in response to your request for information regarding the study requested by the Missouri River Association of States and Tribes (MoRAST) related to the authorized purposes of Missouri River Mainstem Reservoir System. I understand the Natural Resources Interim Committee of the North Dakota Legislature is reviewing appropriate action that it may wish to take in regards to this issue. In short, the reason for the study is to determine whether the operation of the reservoir system, as authorized by current law, is meeting the contemporary needs of the people of the Missouri River Basin, given the significant changes that have occurred in the physical, economic and environmental circumstances since the project was authorized over 60 years ago. The attached summary provides information about the action taken by MoRAST to request the study on February 25, 2008, including background information and the nature of the study requested.

The study was requested after considerable background information was reviewed and discussions occurred with representatives of the Administration and the U.S. Army Corps of Engineers. These officials made clear that the Army must operate the reservoir system in accordance with current law as recently interpreted by the 8<sup>th</sup> Circuit Federal Court of Appeals, which indicated that all the currently authorized purposes must be served. Further, based on actions in other major river basins in the country, it seems apparent that Congress is not likely to make changes to such a major Flood Control Act without a detailed study of alternatives and impacts of such action, including full NEPA compliance. MoRAST is seeing an objective study and has not requested in particular use to be deauthorized. The Army has indicated that it will not initiate such a study without direction and funding from Congress.

As a result, the MoRAST focus has been on the Congressional process. Governors from several States from throughout the Basin have sent letters of support for the study request. There is also active support for the study by many of the Senators and Representatives in the basin, especially in the upper basin, although there is strong opposition by the delegation in the State of Missouri.

Recently the Senate Appropriations Committee reported to the full Senate the Energy and Water Development Appropriations Bill, S. 3258. Section 108 funds a study of the Missouri River Projects to review the original project purposes to determine if changes in the authorized purposes and existing infrastructure may be warranted. The effort was led by Senator Dorgan, who is Chairman of the Energy and Water Development Sub-Committee. The bill contains \$25 Million in funding for the study. The bill would fund the study at full federal expense, apparently due to the complexity of issues and size of the basin involving many States and Tribes. While this is a big step, the bill has a long way to go in the budget process, but this shows considerable support for the study and appears to be consistent with the MoRAST request.

I hope this information is helpful. I am providing a copy of this letter to the two Directors of MoRAST from North Dakota in the event they wish to supplement information in this letter from their perspective. Please let me know if you have questions.

Sincerely,

David L. Pope  
Executive Director,  
Missouri River Association of States and Tribes

Pc: Dale Frink, State Engineer, North Dakota Water Commission  
Terry Steinwand, Director, North Dakota Game and Fish Department



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## ASSOCIATION OF STATES AND TRIBES

### Missouri River Study Request

**Request:** The Missouri River Association of States and Tribes (MoRAST) took action at its February 25, 2008 meeting to request a study to determine whether changes are needed to the Congressional authorized purposes for the Missouri River Mainstem Reservoir System in order to best meet the contemporary needs of the basin. The Corps of Engineers has indicated that it will not initiate such a study without a Congressional directive and funding.

**Background:** The Missouri River Mainstem Reservoir System is operated in accordance with the 1944 FCA (aka the Pick-Sloan Plan) for various authorized purposes including flood control, water supply, irrigation, hydropower, navigation, recreation and fish and wildlife. Over 60 years have now passed since the 1944 FCA was passed. While the construction of the reservoir system and other works have resulted in large project benefits from some of the authorized purposes and much less for others, it has also created substantial environmental impacts, such as a large loss of wetlands and habitat for a number of native species. As a result, two birds and one fish are now listed as threatened or endangered pursuant to the Endangered Species Act, and many other species have suffered major declines. The need for protection of historical and cultural resources is now well documented.

In addition, while some of the authorized purposes such as flood control and hydropower have provided substantial benefits as expected, other purposes such as irrigation and navigation, have not come anywhere close to the expectations when the project was authorized. Other projects purposes, such as municipal and industrial water supply, have become increasingly important as the population has grown and multi-year droughts have occurred. In addition to the negative impacts to recreation and water supply, and the expensive modifications required to lower water supply intakes in the reservoirs and on the river downstream, extended drought and low reservoir levels caused by current system operations, has caused serious impacts to hydropower production. The Western Area Power Administration, which markets power to wholesale customers in the basin, has had their ability to meet firm power demands severely impacted, with much of that due to loss of generating efficiency resulting from low reservoir levels. This has resulted in a 37.3% increase in rates to wholesale customers since January 2004 to cover the cost of purchasing power on the open market. Still other projects purposes, such as recreation have grown far more than expected. Ecosystem restoration has become essential to recover the endangered species, avoid actions that jeopardize the continued existence of the endangered Pallid Sturgeon and allow other project purposes to continue to generate economic benefits. In short, there is no doubt that changes in the physical, economic and environmental conditions have occurred.

**Proposed Study:** MoRAST believes that a study is needed to review and objectively evaluate the 1944 FCA project purposes. It may be appropriate for Congress to authorize a specific comprehensive analysis as it has done in other river basins and areas of the country, such as the Upper Mississippi River Basin, among others. Because of the size and complexity of the Missouri River Basin, the system operation and the scope of the effort, this would allow a new comprehensive plan to be developed that will best meet the contemporary needs of the Missouri River Basin.