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November 9, 2018

BG Peter D. Helmlinger  
Northwestern Division Commander  
U.S. Army Corps of Engineers  
ATTN: CENWO-PM-AC-Management Plan Comments  
1616 Capitol Avenue  
Omaha, Nebraska 68102

RE: Missouri River Recovery  
Management Plan Final  
Environmental Impact Statement

Dear General Helmlinger:

On behalf of The American Waterways Operators (AWO), the national trade association for the tugboat, towboat and barge industry, thank you for the opportunity to comment on the *Missouri River Recovery Management Plan (MRRMP) Final Environmental Impact Statement (FEIS)*. The U.S. tugboat, towboat and barge industry is a vital segment of America's transportation system. The industry safely and efficiently moves 763 million tons of cargo each year, including more than 60 percent of U.S. export grain, energy sources such as coal and petroleum and other bulk commodities that are the building blocks of the U.S. economy. The fleet consists of nearly 5,500 tugboats and towboats, and over 31,000 barges. These vessels transit 25,000 miles of inland and intracoastal waterways, the Great Lakes and the Atlantic, Pacific and Gulf coasts.

The tugboat, towboat and barge industry is not only an integral part of the U.S. intermodal transportation system, but also the safest, most affordable and most fuel-efficient, with the smallest carbon footprint of any surface transportation mode. Actions that adversely impact the efficiency of waterborne commerce, or that result in the diversion of cargo to other modes of transportation negatively impact the U.S. economy, public safety and the environment.

AWO has represented navigation stakeholders on the Missouri River Recovery Implementation Committee (MRRIC) since its inception in the fall of 2008. Authorized by Congress in Section 5018 of the 2007 Water Resources Development Act (WRDA), MRRIC is comprised of nearly 70 representatives of tribes, stakeholder groups, states, and federal agencies. The Committee has the following purposes:

- Providing guidance to federal agencies on the existing Missouri River recovery plan, including priorities for recovery work and implementing changes based on the results

of adaptive management.

- Developing recommendations that recognize the social, economic and cultural interests of stakeholders, mitigate the impacts on those interests and advance the multiple uses of the river.

Two panels were created by MRRIC to peer review the work of the Corps, and other federal agencies, and advise MRRIC on the agencies' products. The Independent Science Advisory Panel (ISAP) and the Independent Social Economic Technical Review (ISETR) Panel evaluated the agencies' work on science and technical matters related to the recovery of the endangered pallid sturgeon, the threatened least tern, piping plover as well as the social and economic impacts of species recovery actions on stakeholders. The work of ISAP and ISETR are heavily relied upon in the following comments.

AWO supports mechanical emergent sandbar habitat construction in the preferred alternative, Alternative 3. As previously stated in our comments on the MRRMP Draft Environmental Impact Statement (DEIS), AWO does not support any flow changes including the one-time flow test in Alternative 3. Draconian flow changes in alternatives 2, 4, 5, and 6 are unacceptable options for the towing industry. There is no credible science that supports flow changes for the recovery of the threatened and endangered species, and the flow changes would negatively impact the economy of the entire Missouri River Basin by interfering with the efficient movement of waterborne commerce. AWO's strong opposition to any flow changes is in alignment with the bipartisan, basin-wide Congressional letter sent to the Corps on December 17, 2015. Under current law, any proposed future management action, including the one-time flow test, that changes the Master Manual cannot be considered without a new and separate Environmental Impact Statement (EIS). Finally, AWO has concerns with the Corps' implementation of the preferred alternative and any potential future management action under the Science and Adaptive Management Plan (SAMP).

### **Importance of Missouri and Mississippi Rivers to the Nation**

Moving goods on the water is the safest, most efficient and most environmentally responsible mode of transportation. A typical inland dry cargo barge has a capacity sixteen times greater than one rail car and seventy times greater than one tractor trailer truck. One 15-barge tow can move the equivalent of 216 rail cars or 1,050 tractor trailers.<sup>1</sup> Inland barge transportation not only provides significant savings to consumers, but also has a significantly smaller carbon footprint than rail or truck. In a study conducted by the Texas A&M Transportation Institute, researchers calculated that transport by truck emits 371% more carbon dioxide per ton-mile than transport by inland barge. The same study also found that for every barge-related fatality, there are 21.9 fatalities on the railways and 79 fatalities caused by trucks.

The Western Rivers system is vital to the nation's economic prosperity. In 2014, 718 million short tons of freight were transported on the Mississippi River by barge.<sup>2</sup> The system supports

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<sup>1</sup> Economic Contributions of the US Tugboat, Towboat, and Barge Industry. PricewaterhouseCoopers. 2017.

<sup>2</sup> IBID.

more than \$200 billion in economic output annually and more than one million jobs.<sup>3</sup> According to Corps' data, there are nearly 600 manufacturing facilities, docks, terminals, and grain elevators that ship and receive tonnage from and to the Upper Mississippi River alone. Approximately 60 percent of all agricultural products and 20 percent of coal and petroleum products are moved on the Mississippi River annually. The Mississippi River transports between 40 and 60 percent of total corn exports and 30 to 45 percent of total soybean exports to major U.S. export markets. Without this world-class transportation system, the country would not be competitive in the world grain market. Agricultural exports are one of the few sectors that provides the country with a positive trade balance.

The Missouri River is part of the economically vital 12,000-mile Western Rivers system that efficiently delivers essential commodities throughout the nation. The list of barge cargo is extensive and robust. Total commodity volumes moved via barge on the inland waterways increased from 538.8 million tons in 2016 to 547.9 million tons in 2017, including 121.1 million tons of coal, 153.8 million tons of petroleum products, 98.3 million tons of agricultural products, and 53.9 million tons of chemicals.<sup>4</sup>

According to the Missouri Department of Natural Resources, the Missouri River supplies almost 50% of the flows to the Middle Mississippi River during normal conditions and provided more than 70% during the 2012 drought. During severe drought years, such as the late 1980's, more than 80% of the water flowing by the St. Louis Arch comes from the Missouri River. The 2012-13 severe drought in both the Missouri and Upper Mississippi rivers seriously threatened the continuity of waterborne commerce, especially once the Missouri River navigation flows were severely decreased after December 1. Because these flows are critical to keep the Mississippi River, America's commercial superhighway, open for business, any future flow change would negatively impact the commerce on the nation's economy.

Before flows were severely disrupted in the late 1990s and early 2000's, towing companies working exclusively on the Missouri River signed five-year contracts with shippers. The disastrous and unreliable flow changes devastated the towing industry, putting all line haul companies working exclusively on the Missouri River out of business.

According to the Missouri Department of Transportation, barge traffic on the Missouri River has been increasing over the last five years since reliable flows have returned. In September 2014, the first barge shipments in eleven years traveled north to Sioux City, Iowa carrying hundreds of thousands of pounds of equipment to an expanding fertilizer plant in Nebraska. The existence of these reliable flows allowed robust barge traffic to continue through December with vessels moving as far north as Mile Marker 660.

The 2015-16 navigation season was also a productive year for barge traffic on the Missouri River. In 2015, the Missouri River saw an increase in barge traffic volume due to reliable flows along with a well-maintained navigation channel. During the record 2015 harvest, the system relieved the roads of 190,000 trucks, reducing traffic on the heavily congested

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<sup>3</sup> The Economic Profile of the Lower Mississippi River. Lower Mississippi Economic Conservation Committee, February 2018.

<sup>4</sup> Barge Commodity Profile. Informa Economics IEG. Page 30-32. March 2018.

Interstate 70. From 2016-2018, the Port of Kansas City experienced an increase in barge traffic volume of nearly 50,000 tons. In addition to this amount, an additional 200,000 tons moved from private terminals through the Kansas City area for a total of over 325,000 tons of freight.

At the Inland Rivers Ports and Terminals meeting in February of 2017, a representative from Archer Daniels Midland (ADM) announced that in 2016, ADM loaded barges on the Missouri River transported 50,000 tons for the first time in 15 years. During the same convention, Missouri Farmers' Association Cooperative (MFA) officials indicated that in 2014, the company loaded barges at Booneville for the first time in 14 years leading the company representative to say, "MFA is back in the water big-time."

With continued reliable flows, operators and stakeholders expect the increase during the last five plus years to continue. However, unlike the early 2000's, the Corps has not recently changed the flows. A return to scientifically unjustified changes in flows to allegedly recover endangered and threatened species is untenable.

### **Alternative 3 – The Preferred Alternative**

AWO maintains that the recovery of the endangered and threatened species can be accomplished without changes to the Master Manual or major flow modifications. AWO supports mechanical emergent sandbar habitat construction contained in each of the alternatives, including Alternative 3, the preferred alternative. Alternative 3 strikes the best balance between species recovery and stakeholder interests. This alternative meets the species targets for the birds with significantly less impacts to industry stakeholders.

However, AWO continues to oppose the one-time spawning cue test release from Gavins Point Dam that could be implemented in the future under Alternative 3. Even as a one-time event, the release would alter the Master Manual and disrupt the continuity of navigation on the Missouri River. AWO would like to remind the Corps that scientific data indicates that previous spring releases have been ineffective as a spawning cue for the pallid sturgeon. The *ISAP Evaluation of MRRMP v3 AM Plan and Pallid Level 3 Action*, released in November 2015, states that the "flow needs of the pallid sturgeon are imprecisely known at all life stages, therefore considerations of flow manipulations to benefit pallid sturgeon are now based on imprecise knowledge." This document further confirms that "the Spawning Cue Flows action presents a hypothesis without compelling technical support." AWO is opposed to any future spring or fall pulse/release that threatens navigation without scientific foundation.

### **AWO Comments on the MRRMP FEIS**

The FEIS fails to address or inadequately addresses many of the concerns detailed in AWO comments on the MRRMP DEIS, specifically:

- **The Corps failed to include the Middle Mississippi River in the geographical scope of the FEIS.** According to the Corps, the geographical scope of the FEIS "includes the Missouri River within its meander belt from Fort Peck Dam in Montana to its confluence with the Mississippi River near St. Louis, Missouri, and the

Yellowstone River from Intake Dam at Intake, Montana to the confluence with the Missouri River.”<sup>5</sup> Unfortunately, the geographical scope does not include the Middle Mississippi River from St. Louis, Missouri downstream to Cairo, Illinois. The failure to include the Middle Mississippi River in the geographical scope of the FEIS calls into question the Corps’ ability to analyze the impacts of the alternatives on the Mississippi River in a thorough and accurate manner.

- **The Corps refused to perform a comprehensive Regional Economic Development (RED) analysis on alternative impacts to Mississippi River navigation.** The Corps states in its response to comments that a RED evaluation was not conducted “because changes in river stages would not cause navigation to cease on the Middle Mississippi River such that commodities would need to be shipped by alternate modes” and “because impacts would be temporary and small in most years.” This is a false assumption because changes in river stages cause reliability issues (e.g. delays) and increases costs to commercial navigators, which must be passed onto customers. As costs increase, customers look to alternative modes of transportation for potentially cheaper rates. AWO would like to remind the Corps that even a “temporary” or “small” disruption to Mississippi River navigation can have serious economic consequences. A comprehensive RED analysis for the Mississippi River, if done properly, would illustrate the negative impacts of these alternatives on local and regional economic conditions, such as employment, income, sales, sales tax revenue, flood damage, and other potential costs.
- **The Corps refused to perform an independent comprehensive analysis of water-compelled rates on both the Missouri and Middle Mississippi rivers.** The Corps’ states in its response to comments on the DEIS that “The changes in river flows would not cause a shift in mode to alternate sources. Therefore, a water-compelled rate study was not deemed necessary.” Once again, this is blatantly flawed assumption. By not including this analysis, the Corps has drastically understated both the economic benefits of navigation and the impacts of these alternatives on both Missouri and Mississippi River navigation.

Additionally, the Corps continues to rely on the same academic resource that they have used for over 25 years to justify its failure to include an independent analysis of water compelled rates in the FEIS. Dr. Burton and Dr. Bray of the University of Tennessee conducted a qualitative assessment, but did not conduct a **quantitative** assessment, resulting in an incomplete analysis of the impacts of Missouri River navigation on water-compelled rates. Dr. Burton and Dr. Bray also concluded that “unless the reliability and long-run availability for navigation of the Missouri River are reversed, water-compelled rates attributable to Missouri River navigation seem improbable.”<sup>6</sup> According to the FEIS, it’s the industry’s fault there is not more confidence in the reliability of the Missouri River. In reality, the Corps’ mandated management actions for species recovery caused the primary issues with reliability.

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<sup>5</sup> MRRMP FEIS Executive Summary, page vi-vii.

<sup>6</sup> MRRMP FEIS Navigation, page 3-442.

- **The Corps refused AWO’s request to remove years from the 82-year period of record where navigation was non-existent or unreliable due to government mandated artificial regulatory actions to recover endangered species.** The use of the 82-year period-of-record is flawed because it includes years when the federal government mandated artificial regulatory actions that greatly diminished the presence of navigation on the Missouri River. As stated previously, the low summer flows on the Missouri River in the early 2000’s caused navigation to virtually disappear. Several towing companies went out of business in the early 2000s due to low summer flows on the Missouri River. A few years later, the Corps implemented a large spring rise to serve as a spawning cue for pallid sturgeon. This second artificial federal action discouraged navigation on the river due to reliability concerns. In fact, navigation on the Missouri River did not begin to recover until recent years when the Corps consistently provided reliable flows. As a result of the Corps’ decision to include these years in the modeling, the benefits of navigation on the Missouri River are substantially understated in the FEIS.
- **The Corps refused AWO’s request to perform Independent Peer Review of the FEIS, which would include professionals who have a comprehensive understanding of navigation models and water-compelled rates.** In our DEIS comments, AWO highlighted several instances where the ISETR panel admitted they are not transportation economists and do not have the expertise to understand how the navigation economic model affects transportation costs, rail loads, infrastructure impacts, and water-compelled rates.
- **The Corps failed to perform comprehensive modeling that would measure the true economic impacts of the various alternatives on stakeholders on both a national and regional basis.** For example, the FEIS states “Since the hydraulic modeling ended at the St. Louis gage, an analysis at the St. Louis gage was used to infer the potential for flood risk management impacts along the Middle Mississippi River downstream of St. Louis.”<sup>7</sup> The Corps’ incomplete modeling for the Middle Mississippi renders the impacts of the alternatives invalid.

### **Implementation of the Preferred Alternative and any Potential Future Management Actions under the Adaptive Management Plan**

While AWO supports mechanical emergent sandbar habitat under the preferred alternative, Alternative 3, we have significant concerns and questions about implementing this alternative under the Science and Adaptive Management Plan (SAMP).

Under the Pallid Sturgeon Framework, AWO is deeply troubled by the overview of the Decision Criteria for decisions in this framework specified in Figure 4.3. For the Lower Missouri River, this decision criteria allows activities in level 1 (research/studies) and level 2 (in-river testing) to proceed to the Level 3 (scaled implementation) implementation phase even if evidence of the effectiveness [of the action] is uncertain.<sup>8</sup> AWO objects to this

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<sup>7</sup> MRRMP FEIS. Mississippi River Impacts, page 3-687

<sup>8</sup> Section 4.4.1.1 Pallid Sturgeon Framework—Figure 4.3—Overview of Decision Criteria for Various Decisions in Pallid Sturgeon Framework, page 4-6.

decision criteria given the impacts that these Level 3 actions will have on the human considerations and Congressionally-authorized purposes on the river such as navigation and flood control. This decision criteria also seems to contradict both the Corps and U.S Fish and Wildlife Service's (USFWS) insistence on using the best available science as required by the National Environmental Protection Act (NEPA). Is the Corps admitting that it will proceed to an implementation (Level 3) phase of an action even if the evidence of the effectiveness of such an action is uncertain? If this is the case, has the Corps informed the U.S. Congress about this decision criteria? This approach to decision making under the Pallid Sturgeon Framework is not based on sound science and is devoid of any common sense.

Regarding the "potential" one-time flow test within the preferred alternative, the FEIS states the following:

*If necessary the one-time flow test within the preferred alternative would likely be implemented through a one-time Master Manual deviation request that would be coordinated through the [Missouri River] Annual Operating Plan Process (AOP), which involves public meetings and review.<sup>9</sup>*

AWO believes that any effort to implement the one-time flow test through the Missouri River AOP is simply unacceptable and nothing more than attempt to circumvent the environmental and administrative review process required to change the Master Manual. Furthermore, the AOP review process is not nearly as thorough of a scoping process as a supplemental EIS required under the NEPA.

The FEIS also conveys the following regarding the one-time flow test in Alternative 3:

*The one-time spawning cue test (Level 2) release under Alternative 3 was not included in the hydrologic modeling for this alternative because of the uncertainty of the hydrologic conditions that would be present if implemented.<sup>10</sup>*

Given the fact that the one-time flow test has yet to undergo sufficient hydrologic modeling because of the uncertainty of future hydrologic conditions, the Corps cannot possibly proceed with implementing this flow test through the AOP process. There is not enough time under the AOP to provide an adequate analysis and review of the impacts of the flow test on stakeholders and the environment.

If the one-time flow test is eventually implemented in the future, this federal management action must undergo comprehensive economic and hydrological modeling to assess its impacts on the Congressionally-authorized purposes of the system, especially the two primary authorized purposes of navigation and flood control.

The FEIS explains the Corps rationale behind the modeling for the one-time flow test:

*"Hydrologic modeling for Alternative 6 simulates reoccurring implementation (Level 3) of this spawning cue (one-time flow test in Alternative 3) over a wide range of hydrologic*

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<sup>9</sup> Section 4.8—Implementation Costs and Authorities, page 4-21.

<sup>10</sup> Section 3.15.2.1—Commercial Navigation-Alternative 3—Gavin's Point One-Time Spawning Cue Test, page-3-458.

*conditions in the POR. Therefore, the impacts from the potential implementation of a one-time spawning cue test release would be bound by the range of impacts described in the individual releases under Alternative 6.<sup>11</sup>*

This modeling for a release over the range of hydrological conditions for Alternative 6 is not sufficient to address future hydrological conditions, weather patterns, and the possible impacts of climate change.

AWO also has grave concerns that the Corps may attempt to use this “programmatic” MRRMP-EIS and its adaptive management framework to evaluate and implement future management actions without the proper environmental review and scoping process under NEPA.

The FEIS states the following regarding this process:

*By addressing uncertainties and potential impacts associated with potential future management actions as a part of **this** [current] EIS, the need to supplement or prepare additional NEPA documents will be reduced. The MRRMP EIS establishes a Science and Adaptive Management Plan that is flexible and should allow many of the management actions specified within the preferred alternative to proceed without additional NEPA analysis or with site-specific NEPA analysis. Information gathered through the adaptive management process will be used to adjust actions within the range of impacts analyzed in **this** EIS.<sup>12</sup>*

With this statement, the Corps is saying that under this programmatic EIS and SAMP, the agency could select and implement any of the five other alternatives analyzed in the current EIS without undertaking a separate EIS under NEPA. And once again, the Corps is stating that it can implement the one-time flow test in Alternative 3 without having to undergo a supplemental EIS. AWO opposes this approach because five of the six alternatives analyzed in the current EIS, including the one-time flow test in Alternative 3, make significant flow changes to the Missouri River Master Manual. AWO believes that the selection of any of these other alternatives as a future management action, including the one-time flow test, must undergo a separate EIS under NEPA because the Corps would be making substantial changes to the [original] proposed action that are relevant to environmental concerns. This latter point is one of the circumstances under NEPA that requires agencies to prepare a “supplement” to its FEIS (see Section 4.9.2—Supplemental NEPA Documentation, page 4-24).

AWO is troubled by both the Corps’ and the USFWS’ desire to circumvent the proper environmental review and scoping process under NEPA regarding selecting and implementing future management actions that make significant flow changes to the Master Manual. This is especially the case given the fact that the Corps repeatedly highlights in both the FEIS and the SAMP the numerous uncertainties concerning possible future management actions and whether those actions would be effective in recovering the species, particularly the endangered pallid sturgeon. The Corps and the USFWS also convey the various uncertainties

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<sup>11</sup> Section 3.15.2.1—Commercial Navigation—Alternative 3—One-Time Spawning Cue Test, page 3-458.

<sup>12</sup> Section 4.9 Future NEPA and Other Environmental Compliance Requirements, Page 4-24.

with pallid sturgeon habitat and what actions might be needed to recover the sturgeon.

Listed below are just a few examples of statements in the FEIS and the SAMP regarding these types of uncertainties:

*Despite considerable effort, the identification of the specific factors causing recruitment failure for pallid sturgeon and a clear nexus between management actions and population response remains elusive for the lower river (downstream of Gavins Point Dam).<sup>13</sup>*

*Uncertainties for pallid sturgeon identified in the EA have been expressed as Big Questions related to potential management actions with underlying hypotheses.<sup>14</sup>*

*Uncertainties for the Lower Missouri River revolve around how pallid sturgeon use the river, its tributaries, and the Mississippi River.<sup>15</sup>*

*Managing for the pallid sturgeon presents more significant challenges. Uncertainties regarding the specific factors causing recruitment failure for pallid sturgeon and the inability to link management actions with population response prevent the clear identification of the System manipulations required to address the species' needs.<sup>16</sup>*

*Implementers of the MRRP will be faced with decisions about the above management actions with limited knowledge of future conditions that could significantly affect the amount of habitat and species populations, and without knowing precisely how habitat and species will respond to those future conditions.<sup>17</sup>*

Given the numerous admissions in the FEIS and the SAMP concerning the uncertainties regarding species needs, future conditions, species' habitat, and possible future management actions; the Corps is legally required to perform a supplemental EIS if any new management action were to be selected in the future, especially if that management action is outside the Record of Decision (ROD). In addition, one would think that the Corps, as the lead agency on the MRRMP, would want to undertake a new EIS on any future management action to ensure accuracy, integrity, transparency, and accountability in the process. Both the Corps and the USFWS cannot expect the SAMP to serve as a substitute for the NEPA process, especially given all the uncertainties noted in the FEIS and the SAMP.

Finally, AWO opposes the Corps' and the USFWS' plans to build twelve Interception and Rearing Complexes (IRC's) in the Missouri River between Kansas City, MO and the confluence just north of St. Louis. AWO is very concerned that construction of these IRC's will have negative impacts on navigation safety and the movement of commerce on this area of the river. Several of AWO's member companies have expressed safety concerns with many of the locations of these IRC's as they are situated on narrow bends in the river, which already pose challenges for navigators. AWO has requested that the Corps limit the construction of

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<sup>13</sup> SAMP—Section 1.4—AM for Pallid Sturgeon, page 32.

<sup>14</sup> SAMP—Section 1.4.2 Pallid Sturgeon Objectives and Key Uncertainties, page 33.

<sup>15</sup> SAMP—Section 1.4.5—Pallid Sturgeon in the Lower Missouri River, page 40.

<sup>16</sup> SAMP-Section 1.7 Summary, page 51 and 52.

<sup>17</sup> SAMP—Section 1.3.2—Implementing, monitoring, and evaluating bird actions, page 26.

these IRC's in the lower river to the two that have already been constructed at Baltimore and Searcy Bends until their effectiveness and impacts on Congressionally-authorized purposes can be determined. The two existing IRC sites should provide the Corps and the USFWS with baseline information as to the effectiveness of IRCs in establishing pallid sturgeon habitat that produces spawning and recruitment for the fish.

AWO is concerned about a replication of the failed water habitat chute projects, because those projects have caused damaging impacts to the navigation channel while providing little benefit to the pallid sturgeon. AWO is not opposed to the IRC concept, but we believe the Corps should pause and demonstrate the validity of the [IRC] hypothesis before spending more taxpayer money constructing additional sites. Since the Corps refused to act in a reasonable manner, AWO and other stakeholders sought language in the 2018 WRDA, which puts a moratorium on the construction of IRCs and directs the Corps to produce a study regarding the effectiveness of IRC's and their impacts on authorized purposes. AWO looks forward to working with the Corps in evaluating the IRCs.

#### **Science and Adaptive Management Plan (SAMP)**

According to the MRRMP FEIS and the SAMP,

*This SAMP accompanies the Missouri River Recovery Management Plan-Environmental Impact Statement and provides the roadmap for the implementation of the selected alternative and for the identification of subsequent management needs should the initial suite of actions fail to meet the objectives. The SAMP will be implemented collaboratively by the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and MRRIC following the governance process outlined in this plan.<sup>18</sup>*

Upon reviewing this statement, there is no question that the Corps and the USFWS have entrusted the SAMP with tremendous power and decision-making authority over the current and future management of the Missouri River Mainstem Reservoir System. While AWO understands the Corps' and the USFWS' desire to learn from scientific research to reduce uncertainty as time goes by, we are very much concerned about the immense amount of authority given to these agencies under the SAMP without any significant accountability mechanisms under the AM governance process. We are also concerned that SAMP, while noble in its intent, may be used by the agencies as the impetus to avoid the appropriate supplemental EIS under NEPA should a future management action with flow changes be selected for the operation of the Missouri River System.

While AWO is not opposed to the concept of Adaptive Management, AWO has numerous concerns regarding the Governance of the Adaptive Management Program within the SAMP. Regarding Adaptive Management Governance, the SAMP states the following:

*Governance of the MRRMP involves making decisions about topics ranging from highly technical considerations, such as the selection of monitoring sites and sample sizes, to policy—and **value-laden issues** whether to adjust reservoir operations criteria.<sup>19</sup>*

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<sup>18</sup> SAMP—Abstract, page IV, SAMP—Section 1.1.2—Missouri River Recovery Program (MRRMP), page 6

<sup>19</sup> SAMP—Section 1.2.1—AM Governance—AM decision needs, page 15.

AWO strongly objects to Corps use of the term “value—laden” issues in describing adjusting reservoir operations criteria. Adjusting reservoir operations criteria is not a “value-laden” decision. And while adjusting these reservoir operations may be a policy decision, this policy must be based on sound science and the best available science given the impacts that these types of decisions have on both the environment and stakeholders. The magnitude of these decisions is too great to allow them to be made based on the subjective “value-laden” opinions of bureaucrats.

The SAMP further expounds on Adaptive Management Governance:

*Major policy decisions are made by the Corps Division and District Commanders—subject to their authorities and their appropriations---with input from the USFWS, MRRIC, and the public when appropriate. Some decisions are joint USACE and USFWS function (e.g. changes to targets, decision criteria, or management actions). The MRRIC works closely with the USACE and the USFWS (agency) leaders, providing input on a full range of decisions, and may provide consensus recommendations on any decision...Senior leaders for the agencies provide oversight for the MRRP and are the ultimate decision makers. The Corps Northwestern Division Commander sets the direction for the Program, while the District Commanders are responsible for its execution...The Region 6 Director is responsible for input and decisions for the USFWS, while the Assistant Director for Ecological Services is the USFWS Counterpart to the Northwest Director (NWD) of Programs.<sup>20</sup>*

This decentralized decision-making process spread out among senior, middle-level, and regional agency officials leads AWO to ask some fundamental questions: Where is the accountability for this process and these decisions? Will these agency personnel consult with senior cabinet level officials from their own agencies on these decisions? Will they consult with Congress on these decisions? There seems to be very few, if any, accountability mechanisms for these decisions under the AM Governance of the Adaptive Management Program in the SAMP. AWO is very concerned about this lack of accountability in the AM Governance Program.

AWO is very concerned about the broad discretion and authority provided in the SAMP to select and implement new management alternatives for the river system beyond the preferred alternative, including the implementation of actions other than those in the ROD.

Under the consideration of new management actions, the SAMP AM framework specifies the process:

*The AM framework guides decisions regarding the nature of subsequent actions. Should those actions prove ineffective in meeting targets for the listed species, the USACE, in consultation with the USFWS and with MRRIC engagement will determine the appropriate course of action. That may include continued implementation and monitoring of the selected alternative, adjustments to the actions or targets, or the*

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<sup>20</sup> SAMP—Sections 1.2.1—AM Decision Needs, page 15; and SAMP—Section 1.2.2—Program composition roles, and responsibilities, page 18.

*introductions of management actions other than those in the ROD.*<sup>21</sup>

Besides the serious questions regarding accountability for these decisions, AWO once again questions whether the Corps and the USFWS intend to use the SAMP as motivation to avoid the necessary EIS requirements under NEPA for any new management actions for the Missouri River System. AWO believes that the selection of any new management alternative that makes changes to the Missouri River Master Manual or that is outside the ROD must undergo a separate EIS under NEPA. A separate EIS is necessary given the fact that the SAMP states, that “There will be a need under the SAMP to make a wide range of decisions under uncertainty that have complex implications for endangered species, scientific learning, and for Tribes, states and stakeholders.”<sup>22</sup>

Finally, AWO objects to the wording in the SAMP referring to the effects on human considerations as “secondary considerations.”<sup>23</sup> U.S. Courts have a history of reminding the Corps of its legislative obligation to the human considerations of flood control and navigation as the primary authorized purposes of the system (see *Operation of MO River Sys. Litig., MO vs Army Corps of Engineers*). While the courts understand and sympathize with the complexity of balancing multiple and varies interests, they have made clear that the Corps cannot sacrifice flood control and navigation for endangered species. Therefore, AWO expects the Corps and the USFWS to give equal consideration to the species and human considerations in the agencies’ decision making.

### **Other Comments on the MRRMP FEIS**

After reviewing **Section 3.15.2 of the FEIS—Affected Environment and Environmental Consequences—Missouri River Navigation Cumulative Impacts**, AWO noticed that Corps appears to have altered some wording in this section from the original text contained in the DEIS. The Corps has changed this wording without any explanation. This change is quite significant. See below:

In the MRRMP DEIS, under Section 3.15.2—Missouri River Navigation Cumulative Impacts, the Corps states the following:

*Adverse impacts could result in the reduction of the navigation season length for years with the low summer flow, and the potential reduction in service level provided that could occur in the years with the spawning cue pulse. When combined with other past, present and reasonably foreseeable future actions, the cumulative impacts on navigation associated with Alternative 2 would result in a large reduction in navigation benefits. The majority of the relatively large, long-term adverse impacts would be caused by the low summer flow which would shorten the navigation season and prohibit navigation during the important months of the year. While shippers may be able to plan around the low summer flow period, the reliability of the of the Missouri River would be reduced and shippers would begin to transition to other modes of transportation. Over time as more*

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<sup>21</sup> SAMP—Section 2.4.5 Considerations of new management actions, page 125.

<sup>22</sup> SAMP—Section 2.4.5.2—Considerations for new management actions—Structured processes for decision making, page 126

<sup>23</sup> SAMP—Ibid, page 127

*shippers switch to other modes, the overall navigation benefits on the Missouri River would be largely reduced.*<sup>24</sup>

However, in the same section of the FEIS under Missouri River Navigation Cumulative Impacts, the Corps wording on Alternative 2 is different:

***Alternative 2 would result in negligible to small adverse impacts to average annual navigation National Economic Development (NED), Regional Economic Development (RED), and Other Social Effects (OSE) compared to Alternative 1. In the years when the low summer flows would occur, there would be small to large adverse effects to navigation transportation rate savings, and repeated implementation of the low summer flow events would likely affect navigation reliability in the long run. When combined with past, present, and reasonably foreseeable future actions, the cumulative impacts associated with Alternative 2 would be short-term and small to large and adverse; however, in the long-term, the low summer flow events under Alternative 2 would result in a large contribution to cumulative adverse impacts as reliability on the river becomes uncertain.***<sup>25</sup>

As you can see, this language is altered significantly in the FEIS to soften the impacts of Alternative 2 on navigation. The Corps changed this wording without any explanation. AWO included the previous text in our comments to the Corps on the DEIS. Now that the FEIS has been released, the wording has been changed. We find this altered language troubling for two reasons:

- As stated above, the Corps changed this language without any explanation.
- The new text in the FEIS is not nearly as accurate as the old text in this section in the DEIS.

AWO would appreciate an explanation from the Corps as to why the agency appears to have altered this text [from the DEIS] in the final FEIS without explaining the reason for this change in language.

According to following passage in Chapter 1 of the SAMP:

*Section 3.2.4.3 includes management actions not evaluated in the MRRMP EIS. These actions have greater uncertainty about effectiveness but have been identified as potential actions that should be evaluated through research, modeling, and pilot projects.*<sup>26</sup>

Given all the uncertainties concerning the current set of management actions meeting species needs and objectives, why would the Corps and the USFWS waste more taxpayer money and scarce resources to pursue management actions which the agencies know have greater uncertainty in terms of potential effectiveness? This is not good public policy.

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<sup>24</sup> MRRMP DEIS Section 3.15.2—page 3-420

<sup>25</sup> MRRMP FEIS Section 3.15.2—page 3-481

<sup>26</sup> SAMP—Section 1.3.2—Implementing, monitoring, and evaluating bird actions, page 28.

**Conclusion**

Under the Flood Control Act of 1944, Congress authorized the Corps to govern U.S. waterways. Additionally, this act required the Corps to prioritize flood control and navigation as the two primary functions of its authority. Though the responsibilities of the Corps have increased over time with additional directives from Congress, namely those to assist in protecting endangered species, the new obligations have not diminished the essential original priorities. While the courts have noted the difficulty in balancing these varied interests, case law is clear that endangered species do not get to take precedence to the detriment of flood control and navigation. Thus, while it is a painstaking task, it is imperative that the Corps find a fair balance for these complex issues.

In closing, AWO supports mechanical emergent sandbar habitat construction in preferred alternative 3. However, we are opposed to the one-time flow test in the preferred alternative due to its potential negative impacts on navigation. AWO also opposes alternatives 2,4,5, and 6 and any alternative or management action that would modify the flows on the river and require a change to the Missouri River Master Manual.

Thank you again for the opportunity to comment on the MRRMP FEIS. AWO understands the difficult nature of this endeavor and is confident the recovery of the pallid sturgeon, least tern and piping plover can be achieved without negatively impacting the efficient movement of commerce on the Missouri and Mississippi rivers. AWO stands ready to work with the Corps to support a Missouri River system that balances the needs of both humans and our ecosystem while providing reliable navigation flows.

Sincerely,

A handwritten signature in black ink that reads "Thomas M. Horgan". The signature is written in a cursive style with a large initial 'T'.

Thomas M. Horgan  
Senior Manager – Midcontinent Office